

# Supreme Court of the United States

October Term, 1943.

No. 154.

---

ANDERSON NATIONAL BANK, Suing on Behalf of  
Itself and All Others Similarly Situated, - - - Appellants,

*versus*

H. CLYDE REEVES, Individually and as Commis-  
sioner of Revenue of the State of Kentucky, Etc.,  
Et Al., - - - - - Appellees.

---

APPEAL FROM THE COURT OF APPEALS OF  
THE STATE OF KENTUCKY.

---

## BRIEF FOR APPELLANTS.

---

CHARLES W. MILNER,  
LEO T. WOLFORD,

Kentucky Home Life Bldg.,  
Louisville, Ky.,

*Attorneys for Appellants.*

BULLITT & MIDDLETON,

Louisville, Ky.,

*Of Counsel.*

November 22, 1943.

# INDEX.

	PAGE
OPINIONS BELOW . . . . .	1
JURISDICTION . . . . .	2
STATUTES INVOLVED . . . . .	2-3
QUESTIONS PRESENTED . . . . .	3-4
STATEMENT . . . . .	4-7
SPECIFICATION OF ERRORS . . . . .	7-9
DIGEST OF KENTUCKY ESCHEAT ACT . . . . .	10-19
ARGUMENT . . . . .	10-33
1. A state cannot escheat or take deposits from a national bank on account of inactivity . . . . .	19-26
2. It is violative of the due process clause of the Fourteenth Amendment for a state, under threat of penalty, to require national and state banks and others to voluntarily surrender inactive bank deposits or other presumed abandoned property without suit, effective notice to the owner, hearing and judicial decree . . . . .	27-33
THE STATE COURT'S CONSTRUCTION OF THE KENTUCKY ESCHEAT ACT IS NOT CONTROLLING . . . . .	34
THE OPINIONS OF THE COURT OF APPEALS OF KENTUCKY . . . . .	35-40
CONCLUSION . . . . .	41
APPENDIX	
Kentucky Revised Statutes 393.010 to 393.990 (Ken- tucky Escheat Act) . . . . .	43-55
1940 Kentucky Escheat Act, Baldwin's Carroll's Kentucky Statutes 1605a to 1622-1 . . . . .	56-69
1942 Amendment . . . . .	70-71
Second opinion Kentucky Court of Appeals . . . . .	72
First opinion Kentucky Court of Appeals . . . . .	73-84

## CASES CITED.

---

	PAGE
American National Bank of Nashville, et al., v. Clarke, Superintendent of Banks, 135 S. W. (2d) 935, 175 Tenn. 480.....	25
Carmichael v. Southern Coal Co., 301 U. S. 495.....	34
Chicago, R. I. & P. Ry. Co. v. U. S., 284 U. S. 80.....	39
➤ Cunnius v. Reading School District, 198 U. S. 458....	28
Educational Films Corp. v. Ward, 282 U. S. 379.....	34
First National Bank of San Jose v. California, 262 U. S. 366 .....	19, 25, 26, 35, 36
Hamilton v. Brown, 161 U. S. 256.....	31
National City Bank v. Philippine Islands, 302 U. S. 651 .....	23
Provident Institution for Savings v. Malone, 221 U. S. 660 .....	29
Security Savings Bank v. California, 263 U. S. 282...	23, 27, 37
Starr, Attorney General, v. O'Connor, Comptroller of the Currency, et al., 118 F. (2d) 548 (6 C. C. A.). Certiorari denied, 314 U. S. 695.....	24

## STATUTORY PROVISIONS CITED.

---

Baldwin's Carroll's Kentucky Statutes, 1605a to 1622-1 .....	2
Judicial Code, Sec. 237a.....	2
Kentucky Revised Statutes 393.010, 393.060 to 393.990 ..	2, 10

## MISCELLANEOUS CITATIONS.

---

7 Am. Jur., Banks and Banking, p. 291, Sec. 415.....	25
9 C. J. S., Banks and Banking, Sec. 694, p. 1255.....	25

# Supreme Court of the United States

October Term, 1943.

No. 154.

---

ANDERSON NATIONAL BANK, SUING ON BE-  
HALF OF ITSELF AND ALL OTHERS SIMI-  
LARLY SITUATED, - - - - - *Appellants,*

v.

H. CLYDE REEVES, INDIVIDUALLY AND AS  
COMMISSIONER OF REVENUE OF THE STATE  
OF KENTUCKY, ETC., ET AL., - - - *Appellees.*

---

APPEAL FROM THE COURT OF APPEALS OF THE  
STATE OF KENTUCKY.

---

## BRIEF FOR APPELLANTS.

---

## OPINIONS BELOW.

There are two opinions of the Court of Appeals of Kentucky in this case. The first opinion is officially reported in 293 Ky. 735, 170 S. W. (2d) 350 and may be found at R. 53. The second opinion is officially reported in 294 Ky. 674, 172 S. W. (2d) 575 and may be found at R. 89. The second opinion is a mere application of Kentucky's "law of the case rule" to the

effect that on a subsequent appeal the court is "bound by the opinion on the first appeal whether it be right or wrong."

### **JURISDICTION.**

The judgment of the Kentucky Court of Appeals under review was entered June 15, 1943 (R. 89). The appeal was granted by the Chief Justice of that court on June 18, 1943 (R. 94). Probable jurisdiction was noted October 11, 1943.

The jurisdiction of this Court to review by direct appeal the judgment complained of is conferred by Section 237a of the Judicial Code as amended by the Act of February 13, 1925, 28 U. S. C. A., Section 344(a).

### **STATUTES INVOLVED.**

The statutes involved are Kentucky Revised Statutes 393.010 and 393.060 to 393.990, inclusive.<sup>1</sup> They are a part of the Kentucky Escheat Act of 1940 as amended in 1942. The entire Escheat Act as contained in the Revised Statutes is copied in the Appendix beginning at page 43. It is hereafter referred to as the Escheat Act.

<sup>1</sup>When this suit was filed Carroll's Kentucky Statutes, Baldwin's 1936 Revision and the Supplements thereto, were the official edition of the Kentucky Statutes. Therefore, the pleadings and the May 8, 1942 judgment of the Franklin Circuit Court referred to such statutes 1605a to 1622-1. During the first appeal to the Kentucky Court of Appeals, the Kentucky Revised Statutes became the official statutes of Kentucky. Therefore, the first opinion of the Court of Appeals dated December 18, 1942, and all subsequent judgments, orders and opinions refer to the Kentucky Revised Statutes. The Revised Statutes are a rewrite and re-grouping of the former Carroll's Statutes.

These statutes create a new kind of escheat in Kentucky, *i. e.*, escheat on account of alleged abandonment. Generally speaking, they provide: (a) That demand and time deposits in national and state banks which have been inactive for 10 and 25 years respectively are presumed abandoned; (b) national and state banks, under threat of penalty, are required to report such presumed abandoned deposits to the state Department of Revenue; (c) national and state banks (again under threat of penalty) are required to voluntarily turn over such deposits to the Department of Revenue without suit, notice to the owner,<sup>2</sup> hearing or judicial decree. There are similar provisions covering unclaimed debts of every kind and all unclaimed personal property held by one person for the benefit of another.

The Escheat Act attempts to relieve the banks and others from liability to the owner and provides a procedure for the owner to secure the return of his money or property.

### QUESTIONS PRESENTED.

1. Does not the Escheat Act in escheating or taking deposits from national banks on account of inactivity violate the National Banking Act?

2. Does not the Escheat Act in escheating or taking presumed abandoned deposits from national and state banks and presumed abandoned property from

<sup>2</sup>The 1942 amendment provided that a copy of the report should be posted on the court house door or bulletin board and should be constructive notice. The Court of Appeals held however that this notice was not necessary.

others without suit, effective notice to the owner, hearing or judicial decree violate the due process clause of the Fourteenth Amendment?

### **STATEMENT.**

The Anderson National Bank is a national banking association with its place of business in Lawrenceburg, Kentucky (R. 2). In August, 1940, it filed suit in the Franklin Circuit Court to enjoin the operation of the 1940 Escheat Act in so far as it related to the escheat of inactive deposits. This 1940 Act is copied in the Appendix at page 56. The suit was a representative one "for all others similarly situated," *i. e.*, all national and state banks and all others required by the 1940 Act to report and to voluntarily surrender inactive bank deposits and other property which the 1940 Act declared "presumed abandoned" (R. 10). The defendants are the officers of the State charged with the administration and enforcement of the Escheat Act.

In January, 1942, the Circuit Court entered an order holding unconstitutional those sections relating to the reporting and surrender of inactive bank deposits and other presumed abandoned property. The order of the Circuit Court provides in part:

"2. That Sections 7, 8 and 9 of the Kentucky Escheat Act of 1940, being Sections 1610, 1611 and 1612 of Carroll's Kentucky Statutes, 1940 Supplement, and each of them are unconstitutional. And Sections 16 and 20 of said Act (Ky. St. 1619 and 1622-1) and each of them are unconstitutional in so

far as they relate to the enforcement or administration of Sections 7, 8 or 9 (Ky. St. 1610, 1611 and 1612) \* \* \*

After this decision the General Assembly of Kentucky at its 1942 session amended Section 8 of the 1940 Act by providing, among other things, that a copy of the report of inactive and therefore presumed abandoned deposits and other property should be posted on the court house door or bulletin board and be constructive notice to all concerned. The amendment further provided, "and the Commonwealth may institute an action to recover such property as is presumed abandoned \* \* \*." The 1942 amendment is copied in the Appendix beginning at page 70. The defendants, by amended petition, pleaded the 1942 amendment (R. 42). Thereafter the circuit court by order dated May 8, 1942 (R. 45) again held that the Escheat Act violated the due process clause in requiring the surrender of inactive bank deposits and other presumed abandoned property without suit, hearing or judicial decree. The order permanently enjoined the defendant state officers and all others from requiring the Anderson National Bank or any of those for whom it sued to turn over to the Department of Revenue of Kentucky any presumed abandoned property without first obtaining an order of a court of competent jurisdiction.

---

<sup>3</sup>This order was entered when Carroll's Kentucky Statutes were still the official publication. Ky. St. 1610-11-12 referred to in the Court's order are now K.R.S. 393.060, 393.070, 393.080, 393.090, 393.100, 393.110 and 393.120 and Ky. St. 1619 and 1622-1 are now K.R.S. 393.230 and 393.290 and 393.990.

For ready reference and for a comparison of section numbers, the Act as it appeared in the then official statutes is copied in the Appendix beginning at page 56.

The effect of the order of the circuit court was to permit the state after suit and judgment to escheat deposits from national banks on account of inactivity or dormancy.

Anderson National Bank prosecuted an appeal to the Court of Appeals of Kentucky from so much of the circuit court judgment as held the Escheat Act applicable to national banks. The defendants prosecuted a cross-appeal from so much of the judgment as required suit and judgment before the state could escheat or take presumed abandoned property.

The Court of Appeals in an opinion dated December 18, 1942 (R. 53, 293 Ky. 735, 170 S. W. (2d) 350) held (1) that the Act permitting the state to escheat or take deposits from national banks on account of inactivity does not violate the National Banking Act, (2) that the Act authorizing the state to require, by threat of penalty, the voluntary surrender of inactive bank deposits and other presumed abandoned property without suit, hearing or judicial decree does not violate the due process clause of the Fourteenth Amendment. The court therefore affirmed the case on the original appeal; reversed it on the cross-appeal and remanded it to the circuit court with directions to enter a judgment in conformity with the opinion. A petition for rehearing was filed (R. 64) and overruled without opinion (R. 86).

On the return of the case to the circuit court that court in obedience to the mandate of the Court of Appeals entered judgment holding that the Kentucky Escheat Act as amended, "being K.R.S. 393.010 through

393.990 \* \* \*, as applied to the plaintiff, Anderson National Bank, suing on behalf of itself and all others similarly situated is valid and is not in conflict with the National Banking Act or with the Due Process Clause of the state constitution or of the Fourteenth Amendment of the Constitution of the United States" (R. 87).

The case was then again appealed to the Court of Appeals and that court on June 15, 1943, rendered its second opinion and order (R. 89, 294 Ky. 674, 172 S. W. (2d) 575) affirming the judgment of the circuit Court.

### **SPECIFICATION OF ERRORS.**

The Court of Appeals of Kentucky erred:

(1) In holding that the Kentucky Escheat Act of 1940, being K.R.S. 393.010 through 393.990 (formerly Carroll's Kentucky Statutes 1605-a through 1622-1, as amended by Chapter 156 of the Act of the General Assembly of 1942), and which provide that demand and time deposits in national and state banks which have been dormant or inactive for ten and twenty-five years, respectively, and that all other personal property held within Kentucky by any person for the benefit of another and which has been unclaimed for a period of ten years are presumed abandoned and must be reported to the Department of Revenue of Kentucky, and, under heavy penalty, must be voluntarily turned over to the Department of Revenue, are valid and constitutional.

(2) In holding that said statutes as construed by the Court of Appeals of Kentucky as requiring national banks, under heavy penalty, to voluntarily turn over to the Department of Revenue deposits on account of inactivity or dormancy do not violate the National Banking Act.

(3) In holding that the said statutes as construed by the Court of Appeals of Kentucky as requiring all banks, under heavy penalty, to voluntarily and without suit or judicial decree turn over to the Department of Revenue deposits on account of inactivity or dormancy do not violate the due process clause of the Fourteenth Amendment of the Constitution of the United States.

(4) In holding that said statutes as construed by the Court of Appeals as requiring all persons in Kentucky who hold personal property for the benefit of another, and which has been unclaimed for a period of ten years must, under heavy penalty, voluntarily turn over such property to the Department of Revenue without suit, notice or judicial decree are not violative of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

(5) In holding that the State of Kentucky can take or escheat deposits in national banks on account of inactivity or dormancy.

(6) In holding that the State of Kentucky can take or escheat deposits in any bank on account of inactivity or dormancy without notice to the owner of such deposits and without suit or judicial decree.

(7) In holding that the State of Kentucky can take or escheat personal property held by any person for the benefit of another and which is unclaimed without notice to the owner of such property and without suit and judicial decree.

(8) In holding that the State of Kentucky can require national or state banks or other persons who hold property for the benefit of another to hand over such property to the state or to any of its agencies without notice to the owner of such property and without judicial decree.

(9) In holding that, "the portions of the Act dealing with dormant bank deposits do not provide for a seizure of the deposits and vesting of title or ownership in the State but merely for a transfer of property."

(10) In holding that "the controversial portions of the Act are reasonable (as to the time provided as well as to the procedure), and that they would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the absence of the provision requiring notice to be posted at the court house door."

(11) In holding that "there is no unwarranted interference with such (national) banks, and no frustration of the purposes of national legislation concerning them such as to render the Act invalid as to them."

## ARGUMENT.

1. A state cannot take deposits from a national bank on account of inactivity or dormancy.

2. It is violative of the due process clause of the Fourteenth Amendment for a state, under threat of penalty, to require national and state banks and others to voluntarily surrender inactive bank deposits or other presumed abandoned property without suit, effective notice to the owner, hearing and judicial decree.

---

Before discussing the above points we give a brief summary of the pertinent parts of the Escheat Act.

It is a comprehensive piece of legislation covering the subject of escheat and repealed prior escheat laws of Kentucky. In addition, it created a new kind of escheat, *i. e.*, escheat on account of abandonment. This case involves only those sections dealing with escheat for abandonment. Such sections are briefly as follows:<sup>4</sup>

K.R.S. 393.010 (d) (1605a) defines "person" to mean a "state or national bank" and others.

393.060 (1610)<sup>5</sup> declares that any deposit payable on demand "shall be presumed abandoned unless the owner has, within" the 10 preceding years had some written transaction with the bank regarding the deposit.

---

<sup>4</sup>The entire Act is copied in the Appendix beginning at page 43.

<sup>5</sup>The numbers in parentheses are the section numbers in Carroll's Kentucky Statutes which were the official statutes when the suit was filed and until the case was in the Court of Appeals for the first time.

**"393.060 (1610) DEPOSITS IN BANK OR TRUST COMPANY PAYABLE ON DEMAND; WHEN PRESUMED ABANDONED.**

"Any deposit (legal, beneficial, equitable or otherwise), payable on demand in any bank or trust company in this state, together with the interest thereon shall be presumed abandoned unless the owner has, within ten successive years next preceding the date as of which reports are required by KRS 393.110:

"(1) Negotiated in writing with the bank or trust company concerning it;

"(2) Been credited with interest on the pass-book or certificate of deposit on his request;

"(3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or

"(4) Increased or decreased the amount of the deposit."

393.070 (1610) has the same provisions for all other deposits, *i. e.*, savings accounts, time deposits, etc., except that the time is 25 years instead of 10.

393.080 (1610) provides that deposits of money, stocks, bonds or other credits to secure payment for services shall be presumed abandoned unless claimed within 10 years.

**"393.080 (1610) DEPOSITS FOR SECURITY; WHEN PRESUMED ABANDONED.**

"Any deposit of money, stocks, bonds or other credits made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against

damage or harm, and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent."

393.090 (1610) provides that all dividends, credits, claims and all intangible personal property held by any person for the benefit of another shall be presumed abandoned unless claimed within ten years.

**"393.090 (1610) INTANGIBLE PERSONAL PROPERTY HELD FOR ANOTHER; BENEFITS ON ANY INSTRUMENT; WHEN PRESUMED ABANDONED.**

"All dividends, stocks, bonds, money, credits and claims for money and credits, and all intangible personal property, and the increments of any of them, held in this state by any person for the benefit of another shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten years from the time the holder, trustee, debtor, or other responsible person became obligated to return them or their equivalent to the proper owner or claimant. If the increments or benefits payable on any instrument are not claimed within the time prescribed in this section, the instrument or evidence of the debt or obligation shall likewise be presumed abandoned."

393.100 (1610) creates a presumption of abandonment of any property paid into any court of the state if not claimed within five years.

393.110 (1611) makes it the duty of all state and national banks and others to report annually to the

Department of Revenue of Kentucky on or before September 1 as of July 1, "all property held by them declared by this chapter to be presumed abandoned." A copy of the report is to be mailed to the Sheriff whose duty it is to post such copy on the court house door or bulletin board. Such posted report "shall be constructive notice to all interested parties."

This section also provides that any "person" who has made a report shall (with certain exceptions not now material), "between November 1 and November 15 of each year, turn over to the Department all property so reported."

This section does not require suit before the escheat or taking of the bank deposits or other property, but provides merely that "and the Commonwealth *may*<sup>6</sup> institute an action to recover such property as is presumed abandoned," and may include in one petition all such property within the jurisdiction of the court.

For ready reference the above section requiring the voluntary surrender of bank deposits and other presumed abandoned property is copied herewith.

**"393.110 (1611) HOLDERS OF ABANDONED PROPERTY TO REPORT TO DEPARTMENT; POSTING OF NOTICES; DUTY TO SURRENDER PROPERTY TO DEPARTMENT; RIGHTS OF ACTION.**

**"(1) It shall be the duty of all state and National banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor,**

---

<sup>6</sup>Italics ours throughout.

liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of KRS 393.060 to 393.100, to report annually to the department as of July 1, all property held by them declared by this chapter to be presumed abandoned. The report shall be filed in the offices of the department on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the department may require for the administration of this chapter. The report shall be made in duplicate; the original shall be retained by the department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post said copy on the courthouse door or the courthouse bulletin board. The sheriff shall immediately certify in writing to the department the date when said copy was posted. Said copy must be posted on or before October 1 of the year when it is made, and shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law.

“(2) Any person who has made a report of any estate or property presumed abandoned, as required by this chapter, shall, between November 1 and November 15 of each year, turn over to the department all property so reported; but if the person making the report or the owner of the property shall certify to the department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall

certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the department except on order of court. No person shall be required to surrender any property on a presumption of abandonment to the department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in court claiming any property which has been reported under the provisions of this chapter, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the department, but shall have the duty of notifying the department of the pendency of such action.

"(3) The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this chapter and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs (1942, c. 156, §§1, 2)."

393.290 (1622-1) provides a 10% penalty up to \$500.00 for a failure to voluntarily surrender the presumed abandoned bank deposits and other property. There is a provision that a person contesting the ap-

plicability of the Act in good faith may be relieved of the penalty by posting a compliance bond.

**"393.290 (1622-1) CIVIL ACTION TO ENFORCE PRODUCTION OF REPORTS, SURRENDER OF PROPERTY.**

"(1) The department may require the production of reports, or the surrender of property as provided in this chapter by civil action, including an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent of all amounts that he is ultimately required to surrender. This penalty shall not exceed five hundred dollars.

"(2) Any person who in good faith contests the applicability of this chapter to him may be relieved of the threat of any penalty by posting a compliance bond in an amount and of surety sufficient to the court."

393.990 (1622-1) imposes a fine of not less than \$50.00 nor more than \$200.00 or an imprisonment of not less than 30 days or more than 6 months, or both, for a failure to make the report of presumed abandoned property.

393.130 (1613) attempts to relieve the person who surrenders the property from liability to the owner.

393.140 (1614) gives any person whose property has been turned over to the state, and where such property has not been adjudged to have been actually abandoned, as provided in 393.230, the right to file a claim for the return of the property. However, in contrast with the taking by the state without notice or suit, the claimant

is required within 15 days after filing his claim to publish a notice of the claim in a newspaper, or if there is no newspaper, to post a notice and to file with the Department of Revenue proof of publication or posted notice.

“393.140. (1614) CLAIM OF INTEREST IN PROPERTY SURRENDERED TO STATE. :

“(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee or other person entitled under the laws of this state relating to wills, descent and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

“(3) The claimant shall, within fifteen days after filing any claim permitted under this section, publish notice of the claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the state. If there is no such newspaper, the claimant shall post the notice at the courthouse door and in three other conspicuous places in that county, and shall file proof of publication or posted notice with the department. No such claim shall be allowed until fifteen days after proof of the notice is received by the department at its offices in Frankfort.

“‘Bona fide circulation’ defined, KRS 424.010.”

393.150 (1615). The Commissioner of Revenue is given authority, if the claimant establishes his claim, to authorize payment.

393.160 (1615). If the claimant is dissatisfied with the decision of the Commissioner, he may appeal within 60 days to the Franklin Circuit Court and from that court to the Court of Appeals.

393.170 (1616) provides that there is no presumption of abandonment as to money or property in the custody of a Federal court and no requirement for the voluntary surrender of such property. However, the circuit court of the county is given jurisdiction to declare an escheat of money or property in a Federal court on account of actual abandonment or death without heirs or distributees.

393.230 (2) (1619) provides that where any property is turned over to the state on presumption of abandonment, the Commissioner of Revenue "may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned or that the owner had died and there is no person entitled to it."

393.230 (1619) PROCEEDING TO FORCE PAYMENT OF INTANGIBLE PROPERTY; TO ESTABLISH ACTUAL ABANDONMENT.

"(2) If any intangible property is turned over to the department on presumption of abandonment, in accordance with KRS 393.060 to 393.120; the commissioner may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned, or that the owner has died and there is no person entitled to it."

From the above it is apparent that:

(a) Demand deposits in national and state banks that have been inactive for 10 years and savings accounts that have been inactive for 25 years are presumed abandoned.

(b) National and state banks, under threat of a fine and jail sentence, or both, are required to report such presumed abandoned deposits.

(c) National and state banks, under threat of a 10% penalty, are required to voluntarily turn such presumed abandoned deposits over to the state without suit, effective notice to the owner, hearing or judicial decree.

---

We now discuss the points of law stated above.

**A State Cannot Escheat or Take Deposits From a National Bank on Account of Inactivity.**

This Court has held in the only cases before it on the subject that it would be violative of the National Banking Act for a state to escheat or take deposits from national banks on account of inactivity.

*First National Bank of San Jose v. California*, 262 U. S. 366.

The above is the first case to reach this Court where a state attempted to escheat or take, by whatever name it might be called, deposits from a national bank on account of inactivity. The period of time in the California statute was twenty years and the California

statute provided all of the safeguards required by due process—suit, notice to the depositor by newspaper publication for four weeks, hearing and a judicial decree.<sup>7</sup>

This Court, reversing the Supreme Court of California, held that it would be a violation of the National Banking Act to permit a state to thus interfere with a deposit in a national bank. The opinion is in part as follows:

p. 368. "Section 5136, U. S. Revised Statutes, confers upon national banks power to receive deposits, which necessarily impiles the right to accept loans of money, promising to repay upon demand to lender or his order. These banks are instrumentalities of the Federal Government. Their contracts and dealings are subject to the operation of general and undiscriminating state laws which do not conflict with the letter or the general object and purposes of congressional legislation. But any attempt by a State to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created. *Davis v. Elmira Savings Bank*, 161 U. S. 275, 283, 288, 290.

"National banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end \* \* \* being such

---

<sup>7</sup>*Securities Savings Bank v. California*, 263 U. S. 282, 284.

means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is "an abuse, because it is the usurpation of power which a single State cannot give." *Farmers' and Mechanics' National Bank v. Dearing*, 91 U. S. 29, 33, 34.

"Congressional legislation in respect of national banks 'has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States.' *Easton v. Iowa*, 188 U. S. 220, 229.

Plainly, no State may prohibit national banks from accepting deposits or directly impair their efficiency in that regard. And we think, under circumstances like those here revealed, a State may not dissolve contracts of deposit even after twenty years and require national banks to pay to it the amounts then due; the settled principles stated above oppose such power.

"Does the statute conflict with the letter or general object and purposes of the legislation by Congress? Obviously, it attempts to qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receive deposits under their plainly granted powers. If California may thus interfere other States may do likewise; and, instead of twenty years, varying limitations may be prescribed—three years perhaps, or five, or

ten, or fifteen. We cannot conclude that Congress intended to permit such results. They seem incompatible with the purpose to establish a system of governmental agencies specifically empowered and expected freely to accept deposits from customers irrespective of domicile with the commonly consequent duties and liabilities. The depositors of a national bank often live in many different States and countries; and certainly it would not be an immaterial thing if the deposits of all were subject to seizure by the State where the bank happened to be located. The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation.

"This Court has often pointed out the necessity for protecting federal agencies against interference by state legislation. The approved principle of *obsta principiis* should be adhered to. *McCulloch v. Maryland*, 4 Wheat. 316; *Osborn v. United States Bank*, 9 Wheat. 738; *Farmers' and Mechanics' National Bank v. Dearing*, *supra*; *California v. Central Pacific R. R. Co.*, 127 U. S. 1; *Davis v. Elmira Savings Bank*, *supra*; *Easton v. Iowa*, *supra*; *Covington v. First National Bank*, 198 U. S. 100; *Farmers and Mechanics Savings Bank v. Minnesota*, 232 U. S. 516; *Choctaw, Oklahoma & Gulf R. R. Co. v. Harrison*, 235 U. S. 292; *Bank of California v. Richardson*, 248 U. S. 476. "Reversed."

The above decision by this Court has been followed in every case without exception, except the present case now on appeal.

*Security Savings Bank v. California*, 263 U. S. 282.

In this case California was attempting to take deposits from state banks under the same statutes that were involved in the national bank case above. This Court, in an opinion by Mr. Justice Brandeis, held that the statute was valid as to state banks and reaffirmed its decision in the San Jose case above that it was invalid as to national banks.

The opinion states:

p. 284. “\* \* \* The question for decision is whether the statutes violate rights guaranteed a state bank by the Federal Constitution.<sup>2</sup> \* \* \*”

The footnote at the bottom of the page is:

“<sup>2</sup>That the statutes are invalid as applied to national banks was settled in *First National Bank v. California*, 262 U. S. 366.”

*National City Bank v. Philippine Islands*, 302 U. S. 651.

This case involved a statute of the Philippine Islands which escheated deposits from national and state banks on account of inactivity. The Supreme Court of the Philippines had held the statute valid as to national banks, 63 Philippine Reports, 1056.

In a *Per Curiam* opinion this Court said:

“The judgment of the Supreme Court of the Philippines is reversed and the judgment of the Court of First Instance of Manila, dated the 24th

day of July, 1934, is affirmed upon the authority of *First National Bank v. California*, 262 U. S. 366, \* \* \*

*Starr, Attorney General, v. O'Connor, Comptroller of the Currency, et al.*, 118 F. (2d) 548 (6 C. C. A.).  
Certiorari denied, 314 U. S. 695.

p. 556. "(9) But, after careful consideration of the authorities mentioned, we have reached the conclusion that none of these cases gainsay the direct and controlling applicability to the instant situation of the doctrine of *First National Bank of San Jose v. California*, *supra*, impelling decision that Michigan escheat procedure, as heretofore detailed, constitutes an unlawful interference with the liquidation of a national bank.

\* \* \* \* \*

p. 557. "A State Supreme Court in our circuit recently followed the authority of the San Jose case and denied, in its applicability to national banks, the constitutionality of a statute requiring the delivery to the state of all bank deposits which have remained inactive for fifteen years, or, in the case of savings funds and time deposits, for twenty-five years. *American National Bank of Nashville v. Clarke*, Sup't of Banks, decided February 3, 1940, 175 Tenn. 480, 135 S. W. (2d) 935. Compare *National City Bank of New York v. Philippine Islands*, 302 U. S. 651, 58 S. Ct. 269, 82 L. Ed. 504, which also cited and followed the San Jose bank case, *supra*."

\* \* \* \* \*

*American National Bank of Nashville, et al., v. Clarke, Superintendent of Banks*, 135 S. W. (2d) 935, 175 Tenn. 480.

In this case the Supreme Court of Tennessee, on the authority of *First National Bank of San Jose v. California*, 262 U. S. 366, held invalid as to national banks a Tennessee statute which attempted to escheat deposits in national banks that had been inactive for fifteen years.

7 *Am. Jur., Banks and Banking*, p. 291, Sec. 415.

"State statutes providing for the escheat of unclaimed bank deposits cannot, however, have any application to deposits in national banks. Such statutes, if applied to those banks, would interfere with the Federal instrumentality in such a way as to conflict with the general object and purpose of legislation by Congress in establishing the national bank system."

9 *C. J. S., Banks and Banking*, Sec. 694, p. 1255.

"*Escheat.* State statutes providing for the escheat of unclaimed deposits to the state after the lapse of a specified period of time cannot validly apply to deposits in national banks doing business within the state. \* \* \*

---

Of course, a state can escheat a deposit in a national bank where there has been a judicial determination of death intestate without heirs or any other judicial determination showing that there is no present owner of

the property. National banks every day recognize court orders regarding executors, administrators, committees, receivers, etc.

Our point is that a state cannot regulate a national bank by prescribing how long national banks can retain deposits whether active or inactive. In *First National Bank of San Jose v. California*, 262 U. S. 366, this Court pointed out the danger of permitting state interference with deposits in national banks:

p. 370. "If California may thus interfere other states may do likewise; and, instead of twenty years, varying limitations may be prescribed—three years perhaps, or five, or ten, or fifteen. We cannot conclude that Congress intended to permit such results."

The California statute was 20 years—the Kentucky statute has already cut this to 10 years.

Congress, by not limiting the time during which a depositor can leave an inactive account in a national bank, meant that national banks had power to retain deposits as long as the depositor desired to leave it there. The Kentucky statute does not proceed on the theory that there is no owner of the deposit. It proceeds on the theory that the owner is alive and because he has left the account inactive the Kentucky statute presumes that the deposit has been abandoned. A state may not thus interfere with national banks.

**It Is Violative of the Due Process Clause of the Fourteenth Amendment for a State, Under Threat of Penalty, to Require National and State Banks and Others to Voluntarily Surrender Inactive Bank Deposits or Other Presumed Abandoned Property Without Suit, Effective Notice to the Owner, Hearing and Judicial Decree.**

This Court has consistently held that suit, effective notice, hearing and judicial decree are necessary before a state can escheat or take property.

*Security Savings Bank v. California*, 263 U. S. 282.

This is the case in which this Court upheld as to state banks the California statute which the Court had condemned as to national banks. In commenting on the suit, notice, hearing and judicial decree in the California statute the opinion by Mr. Justice Brandeis said:

p. 284. "The procedural provision is this: The suit is brought by the attorney general in Sacramento County. Upon the bank, personal service must be made. Upon the depositors, service is to be made by publication of the summons for four weeks in a newspaper of general circulation published in that county. With the summons a notice must also be published requiring all persons other than the named defendants, to appear and show cause why the moneys involved in the suit shall not be deposited with the state treasurer. Any person interested may become a party to the suit. The judgment to be entered requires the banks to forthwith deposit

all such moneys with the state treasurer, to be received, invested, accounted for and paid out in the same manner and by the same officers as is provided in the case of other escheated property.' For a period of five years after entry of the judgment any person not a 'party or privy' to it may sue the State to recover the money so received. In the case of infants and persons of unsound mind, the period is extended for one year after removal of the disability. Code of Civil Procedure, Sec. 1272."

p. 287. " \* \* \* In either case the essentials of jurisdiction over the deposits are that there be seizure of the *res* at the commencement of the suit; and *reasonable notice and opportunity to be heard*. Compare *Pennoyer v. Neff*, 95 U. S. 714, 724; *Freeman v. Alderson*, 119 U. S. 185, 187; *Arndt v. Griggs*, 134 U. S. 316; *Overby v. Gordon*, 177 U. S. 214, 231. These requirements are satisfied by the procedure prescribed in the statutes of California. There is a seizure or its equivalent. And the published summons to the depositors named *as parties defendant* is supplemented by the notice directed to all claimants whomsoever. \* \* \*"

p. 288. "The statutory service is reasonable; and the court is required to hear any one who may appear in the suit. \* \* \*"

*Cunnius v. Reading School District*, 198 U. S. 458.

This case involved a Pennsylvania law relating to the grant of letters of administration upon estates of persons presumed to be dead by reason of long absence. Before an administrator could be appointed the statute required newspaper notice, a hearing in the orphans

court and a finding by that court that the legal presumption of death had been established.

Mrs. Smith had a dower interest in her husband's land for life. She had been absent for nine years and her son had been granted letters of administration. He had collected interest and had given a receipt therefor. Mrs. Smith sued to recover the amount paid the administrator during her absence. This Court decided that the several weeks' notice required by the Pennsylvania statute was reasonable to confer jurisdiction on the state court to make an adjudication and affirmed a decision for the defendant. This Court said:

p. 477. "Let it be further conceded, as we also think is essential, that a state law which did not provide adequate notice as prerequisite to the proceedings for the administration of the estate of an absentee would also be repugnant to the 14th Amendment."

*Provident Institution for Savings v. Malone*, 221 U. S. 660.

Massachusetts had an act which provided that deposits in savings banks which had been inactive and unclaimed for thirty years should be paid to the Treasurer and the Receiver General. However, the Massachusetts statute which this Court approved as to a state bank provided that the inactive bank deposit should not be taken until after there had been public notice, order and decree. Furthermore, after the state acquired the deposit pursuant to the notice, hearing and judicial decree it held it "as trustee for the owner"

and paid the owner 3% interest from the time the deposit was paid to the state. As to due process this Court said:

p. 664. "The statute here is reasonable in its terms and is so framed as to work injustice to no one. It only applies to cases where no deposit has been made, no interest added on pass-book, no check drawn against the account, for thirty years, and where no claimant is known and the depositor cannot be found. *Before the money can be turned over to the receiver general proceedings must be instituted in the Probate Court, and, under the decision of the Supreme Court of the State, personal notice must be given to the bank and citation and notice, usual in the Probate Court, published, so as to give the depositor, if living, and his heirs, if dead, opportunity to appear and be heard. Even then the property is not escheated, but deposited with the treasurer to hold as trustee for the owner or his legal representatives, to whom it is payable when they establish their right.*"

In its first opinion the Kentucky Court of Appeals said (R. 58):

"\* \* \* As said by the Supreme Court in *Provident Institution for Savings v. Malone*, 221 U. S. 660, 31 S. Ct. 661, 55 L. Ed. 899, 31 L. R. S. (N. S.) 1129, in discussing a somewhat similar statute. \* \* \*

It is submitted that the Kentucky Escheat Act, which escheats inactive bank deposits without suit, effective notice, hearing or judicial decree, and which

pays no interest to the owner, and which pays the deposit into the general state funds instead of holding it "as trustee" for the owner, is entirely different and not "somewhat similar" to the Massachusetts statute considered by this Court in the above case.

*Hamilton v. Brown*, 161 U. S. 256.

This case presented a controversy between claimants of property in Texas. The plaintiffs were heirs of a former owner and the defendant asserted title from the State of Texas which was based upon escheat proceedings. With reference to due process before escheat this Court said:

p. 275. "When a man dies, the legislature is under no constitutional obligation to leave the title to his property, real or personal, in abeyance for an indefinite period; but it may provide for promptly ascertaining, *by appropriate judicial proceedings*, who has succeeded to his estate. If such proceedings are had, *after actual notice by service of summons to all known claimants, and constructive notice by publication to all possible claimants who are unknown*, the final determination of the right of succession, either among private persons, as in the ordinary administration of estates, or between all persons and the State, as by inquest of office or similar process to determine whether the estate has escheated to the public, is *due process of law*; \* \* \*"

The Act purports to have been passed for the protection of the depositors. Quite the contrary is true.

It is essentially a revenue measure, the purpose of which is to get money for the state.

1. The depositors are given *no hearing* whatever before their money is required to be paid over to the state.

2. After the circuit court held the Act in its original form to be invalid in part because it provided no notice to the depositors, the 1942 amendment was added to provide the most ineffectual kind of notice by merely posting a list of "presumed abandoned" accounts at the courthouse door. The Court of Appeals held that even this notice was not essential.

3. When the money is received by the state it is not held as a trust fund or for safe keeping, but is deposited in the general expenditure fund so that it can be *spent* immediately for general purposes.

4. Although the depositors may file claims with the state to recover their deposits, they must "turn square corners" and go to considerable expense since the proceedings must be in the State Capital and individual newspaper notice is required to be published for each claim within 15 days after the claim is made.

Manifestly, many of the deposits will be small and it will not be worth while to incur the necessary expense to recover them back from the state. Every facility, including the imposition of severe penalties, is provided for the collection of the money by the state: severe obstacles stand in the way of recovering it back from the state.

The whole theory of the Act shows that the state is not taking over the deposits for the benefit of the

depositors. The pretext for the taking is that the owners have *abandoned* their deposits. If such is the case, they would naturally not seek to recover them back. This clearly shows that the Act was not passed for the protection of the depositors.

It will not do to say that the depositors are not harmed by the taking. Due process guarantees freedom of contract. They may wish to keep their deposits in the banks because they are stockholders or for some other reasons of their own. The state may remain solvent, but there is the possibility that it may (a) repudiate its obligations or (b) fail to make any appropriations to pay them or, (c) in the future, object to being sued.

The Kentucky Constitution provides that the state's indebtedness shall not exceed \$500,000 (Ky. Const. §49). If any indebtedness in excess of that amount is incurred, such excess is void. When the money is paid over to the state, the state at most becomes a debtor. If the debt exceeds, together with other state indebtedness, the sum of \$500,000 the obligation to pay will be void. Despite the probable state solvency, there are many reasons why the depositors may object to the substitution of the state as their debtor.

As to both national and state banks the Kentucky Escheat Act is violative of the due process clause of the Fourteenth Amendment.

---

**The State Court's Construction of the Kentucky  
Escheat Act Is Not Controlling.**

*Carmichael v. Southern Coal Co.*, 301 U. S. 495.

p. 508. "While the particular name which a state court or legislature may give to a money payment commanded by its statute is not controlling here when its constitutionality is in question, *cf.* *Educational Films Co. v. Ward*, 282 U. S. 379, 387; *Storaasli v. Minnesota*, 283 U. S. 57, 62; *Wagner v. Covington*, 251 U. S. 95, 102; *Standard Oil Co. v. Graves*, 249 U. S. 389, 394, we see no reason to doubt that the present statute is an exertion of the taxing power of the state. *Cf.* *Carley & Hamilton v. Snook*, 281 U. S. 66, 71."

*Educational Films Corp. v. Ward*, 282 U. S. 379.

This case involved the validity of the New York corporate franchise tax. In determining for itself the nature of the tax this Court said:

p. 387. "But the nature of a tax must be determined by its operation rather than by particular descriptive language which may have been applied to it. As was said in *Macallen Co. v. Massachusetts*, 279 U. S. 620, 625, 626, '\* \* \* neither state courts nor legislatures, by giving the tax a particular name, or by using some form of words, can take away our duty to consider its nature and effect \* \* \* this Court must determine for itself by independent inquiry whether the tax here is what, in form and by the decision of the state court, it is declared to be \* \* \*'"

---

### **The Opinions of the Court of Appeals of Kentucky.**

The Kentucky Court of Appeals held that the Escheat Act did not conflict with the National Banking Act and was not violative of the due process clause of the Fourteenth Amendment. The second opinion of the court states these holdings as follows (R. 89, Appendix, p. 72):

"We are bound by the opinion on the first appeal, whether it be right or wrong, under our familiar law of the case rule. We have considered the contentions (1) that the Act in question conflicts with the National Banking Act and (2) that it is violative of the due process clause of the 14th Amendment to the Federal Constitution and find the contentions without merit."

The first opinion of the state court (R. 53, Appendix, p. 73) gives that court's reasons for the above holding and for its conclusion that the decision of this Court in *First National Bank of San Jose v. California*, 262 U. S. 366, is not applicable. These reasons are:

(a) The state court holds that under the Escheat Act the escheat or taking of inactive bank deposits and other presumed abandoned property is not an "escheat" but something else. The state court softens the taking by calling it "transfer of property."

It is our position that the name given to the escheat or taking is unimportant.

The state court's reason for the new name given the escheat is because the owner is given the right to file a claim for the return of the property.

(b) The reason given by the state court for disregarding the decision of this Court in *First National Bank of San Jose v. California*; 262 U. S. 366, is because of the state court's conclusion that this Court's decision was based solely and only on the ground that under the California statute the owner of the inactive bank deposit could not file a claim or suit for the recovery of his property.

In each of the above reasons and conclusions the state court is wrong because:

(1) It was alleged in the original petition (R. 8) and nowhere denied by the defendant state officers that: "It is the plan and purpose of the defendants and of the Commonwealth of Kentucky, unless enjoined and restrained by this Court, immediately and as necessity requires to spend any and all money turned over to the Department of Revenue or the State Treasury under the Escheat Act of 1940, and not to segregate or set aside or keep any part of such money as a trust or other fund for the benefit of the owners or claimants thereto."

(2) Since the state takes and spends the inactive bank deposits and other presumed abandoned property it makes no difference to the national bank as an instrumentality of the Federal Government and it makes no difference to the owner of the inactive deposit whether the taking by the state is called by its true name of "escheat" or whether the taking is softened by calling it a "transfer of property."

(3) The state court has misinterpreted this Court's decision in *First National Bank of San Jose v. Cali-*

for *nia*, 262 U. S. 366. That case was not based on whether or not the owner could file a claim for the return of the deposit. This is evidenced by the following from that opinion:

p. 370. "If California may thus interfere other states may do likewise; and instead of twenty years, varying limitations may be prescribed—three years perhaps, or five, or ten, or fifteen. We cannot conclude that Congress intended to permit such results."

The vice in the California statute which this Court said constituted an interference with the National Banking Act was the attempt by California to say how long a national bank could retain a deposit whether active or inactive.

Furthermore, the opinion of this Court in *Security Savings Bank v. California*, 263 U. S. 282, where the same California statute was held valid as to state banks, shows that this Court was not concerned with whether the owner could get his deposit back or not. Mr. Justice Brandeis' opinion states:

p. 290. "In the opinion below it was suggested that the statute may be construed as permitting a depositor, although named as defendant in the attorney general's suit, to make claim against the State, under §1272, at any time within five years (or the extended period) after final judgment, if he did not appear in the suit. As no depositor had appeared, the point was not passed upon; and the state court expressly left open the rights of

depositors and their privies in respect to escheat. State v. Security Savings Bank, 186 Cal. 419, 431. *We have no occasion to consider them."*

(4) Under the theory of the Kentucky Court of Appeals the state is permitted to do in two steps what this Court in the California case prohibited a state from doing in one step. That is, under the California statute, which this Court held invalid as to national banks, the escheat of deposits in national banks on account of inactivity was accomplished in one step—suit, effective notice, hearing and judicial decree.

Under the theory of the Kentucky court this same result is accomplished in two steps. *First*, national banks are put out of the picture by calling the escheat a "transfer of property." *Second*, with the national banks eliminated the Kentucky Escheat Act provides that the state "may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned \* \* \*" (K. R. S. 393.230 (2)). After these proceedings the Kentucky court would undoubtedly concede that there had been an escheat.

In other words, immediately after Kentucky has acquired possession of inactive deposits in national banks by the so-called "transfer of property," and thereby gotten rid of the national bank feature, the state as a second step institutes proceedings for the judicial determination of escheat.

The Kentucky court cannot be right in holding that it is legal to do in two steps what would be illegal to do in one step. In the petition for rehearing this feature

of the opinion was called to the attention of the Kentucky court (R. 64, 65).

(5) In attempting to differentiate the Kentucky Escheat Act from the California statute the Kentucky court in its first opinion seems to think there can be no confiscation unless title has passed.

When the state takes deposits from national banks on account of inactivity and commingles it in its general funds and spends it, it makes no practical difference to the national bank or to the depositor whether there has been a technical passage of title or not. Also there can be confiscation without the passage of title.

*Chicago, R. I. & P. Ry. Co. v. U. S.*, 284 U. S. 80.

p. 96. "Confiscation may result from a taking of the use of property without compensation quite as well as from the taking of the title."

(6) The right of an owner to recover escheated property in Kentucky is not something new. It did not begin, as one might suppose, with the 1940 Escheat Act as to "presumed abandoned property." On the contrary, it has been the law in Kentucky for more than 100 years, or since 1842, that the owner of escheated property could recover the property.<sup>10</sup> Furthermore, prior to the 1940 Escheat Act there was no such thing as an escheat or taking of property until after suit,

<sup>10</sup>In the Court of Appeals of Kentucky we filed as a separate appendix to the brief a copy of every Kentucky Escheat Act since 1798 to show the correctness of this statement. It is not thought necessary to encumber this record with all of these statutes since neither the court nor counsel for appellees controverted the above statement.

notice, hearing and a judicial decree (except escheat on account of alienage).

So the right of the owner to recover inactive bank deposits and other "presumed abandoned property" in the 1940 Escheat Act does not differentiate the escheat of such bank deposits by the state from prior Kentucky escheat laws relating to land or anything else.

(7) As stated, the 1940 Escheat Act, which was subsequently written into the Kentucky Revised Statutes, was a complete law on the subject of escheat and repealed prior laws on escheat. The Escheat Act does not justify the construction given it by the state court. The word "escheat" is used several times in the Act. The words "transfer of property" appear nowhere in the Act. The title to the Act is:

"An Act relating to all classes of property actually or presumptively subject to *escheat*; providing the terms upon which presumption of abandonment of property and presumption of the death of persons shall be determined; providing how and when said property may be *escheated* to the Commonwealth of Kentucky, providing for the reduction of all such property to cash, transferring the possession of same to the Treasurer of Kentucky; providing how any person who is legally entitled thereto may recover same from the Treasurer: \* \* \* (R. 18).

**CONCLUSION.**

Because the Kentucky Escheat Act is violative of the National Banking Act as regards national banks and violative of the due process clause of the Fourteenth Amendment as regards national and state banks and others, this Court is asked to reverse the judgment of the Court of Appeals of Kentucky.

Respectfully submitted,

CHARLES W. MILNER,

LEO T. WOLFORD,

*Attorneys for Appellant.*

BULLITT & MIDDLETON,

*Of Counsel.*

November 22, 1943.

# **APPENDIX.**

## **Kentucky Revised Statutes.**

### **CHAPTER 393**

#### **ESCHEATS**

##### **393.010 (1605a; 1610) CONSTRUCTION OF CHAPTER.**

(1) As used in this chapter, unless the context requires otherwise:

(a) "Claim" means to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved;

(b) "Commissioner" means the Commissioner of Revenue;

(c) "Department" means the Department of Revenue; and

(d) "Person" means any individual, state or national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business, enterprise, including a receiver, trustee or liquidating agent.

(2) This chapter does not apply to bonds of counties, cities, school districts or other tax-levying subdivisions of this state.

##### **393.020 (1606) PROPERTY SUBJECT TO ESCHEAT.**

If any property having a situs in this state has been devised or bequeathed to any person and is not claimed by that person or by his heirs, distributees or devisees within eight years after the death of the testator, or if the owner of any property having a situs in this state dies without heirs or distributees entitled to it and without disposing of it by will, it shall vest in the state, subject to all legal and equitable demands. Also, any property abandoned by the owner, except a perfect title to a corporeal hereditament, shall vest in the state, subject to all legal and equitable demands. Any property that vests in the state under this section shall be liquidated, and the proceeds, less costs, fees and expenses incidental to all legal proceedings of the liquidation shall be paid to the department.

### 393.030 (1607) DISPOSITION OF PROPERTY SUBJECT TO ESCHEAT.

(1) The personal representatives of a person, any part of whose property is not distributed by will, and who died without heirs or distributees entitled to it shall settle their accounts within one year after qualifying, and pay to the department the proceeds of all personal property, first deducting the proper legal liabilities of the estate.

(2) If the whole personal property cannot be settled and the accounts closed within one year, the settlement as far as practicable, shall then be made and the proceeds paid to the department, and the residue shall be settled and paid as soon thereafter as can be properly done.

(3) The personal representative shall take possession of the real property of the decedent not disposed of by his will, and rent it out from year to year until it is otherwise legally disposed of, and pay the net proceeds to the department.

(4) The personal representative shall also make out and transmit to the department a description of the quantity, quality, and estimate value of the real property and its probable annual profits.

### 393.040 (1608) PROCEDURE IF LEGACY OR DEVISE IS NOT CLAIMED.

If any devisee or legatee, or his heir, devisee or distributee, has failed for eight years to claim his legacy or devise, the personal representative of the testator, or other person possessing it shall, after deducting the legal liabilities thereon, pay and deliver it, and the net profits from it to the department.

### 393.050 (1609) PRESUMPTION OF DEATH AFTER SEVEN YEARS; DISPOSITION OF PROPERTY.

When a person owning any property having a situs in this state is not known to be living for seven successive years, and neither he nor his heirs, devisees or distributees can be located or proved to have been living for seven successive years, he shall be presumed to have died without heirs, devisees or distributees, and his property shall be

liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings, and the liabilities which have been properly claimed and approved against it, shall be paid to the department.

**393.060 (1610) DEPOSITS IN BANK OR TRUST COMPANY PAYABLE ON DEMAND; WHEN PRESUMED ABANDONED.**

Any deposit, (legal, beneficial, equitable or otherwise) payable on demand in any bank or trust company in this state, together with the interest thereon shall be presumed abandoned unless the owner has, within ten successive years next preceding the date as of which reports are required by KRS 393.110:

- (1) Negotiated in writing with the bank or trust company concerning it;
- (2) Been credited with interest on the passbook or certificate of deposit on his request;
- (3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or
- (4) Increased or decreased the amount of the deposit.

**393.070 (1610) DEPOSITS NOT PAYABLE ON DEMAND; WHEN PRESUMED ABANDONED.**

Any deposit (legal, beneficial, equitable or otherwise) other than those payable on demand in any bank or trust company in this state, together with the interest thereon, shall be presumed abandoned unless the owner has, within twenty-five successive years next preceding the date as of which reports are required by KRS 393.110:

- (1) Negotiated in writing with the bank or trust company concerning it;
- (2) Been credited with interest on the passbook or certificate of deposit on his request;
- (3) Had a transfer, disposition of interest or other transaction noted of record in the books or records of the bank or trust company; or
- (4) Increased or decreased the amount of the deposit.

### **393.080 (1610) DEPOSITS FOR SECURITY; WHEN PRESUMED ABANDONED.**

Any deposit of money, stocks, bonds or other credits made to secure payment for services rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm, and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten years after the occurrence of the event that would obligate the holder or depository to return it or its equivalent.

### **393.090 (1610) INTANGIBLE PERSONAL PROPERTY HELD FOR ANOTHER; BENEFITS ON ANY INSTRUMENT; WHEN PRESUMED ABANDONED.**

All dividends, stocks, bonds, money, credits and claims for money and credits, and all intangible personal property, and the increments of any of them, held in this state by any person for the benefit of another shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten years from the time the holder, trustee, debtor, or other responsible person became obligated to return them or their equivalent to the proper owner or claimant. If the increments or benefits payable on any instrument are not claimed within the time prescribed in this section, the instrument or evidence of the debt or obligation shall likewise be presumed abandoned.

### **393.100 (1610) PROPERTY PAID INTO COURT; WHEN PRESUMED ABANDONED.**

Any property paid into any court of this state for distribution, and the increments thereof, shall be presumed abandoned if not claimed within five years after the date of payment into court, or as soon after the five-year period as all claims filed in connection with it have been disallowed or settled by the court.

### **393.110 (1611) HOLDERS OF ABANDONED PROPERTY TO REPORT TO DEPARTMENT; POSTING OF NOTICES; DUTY TO SURRENDER PROPERTY TO DEPARTMENT; RIGHTS OF ACTION.**

(1) It shall be the duty of all state and National banks, trust companies, or other persons, and courts of this Com-

monwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of KRS 393.060 to 393.100, to report annually to the department as of July 1, all property held by them declared by this chapter to be presumed abandoned. The report shall be filed in the offices of the department on or before September 1 of each year for the preceeding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the department may require for the administration of this chapter. The report shall be made in duplicate; the original shall be retained by the department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post said copy on the courthouse door or the courthouse bulletin board. The sheriff shall immediately certify in writing to the department the date when said copy was posted. Said copy must be posted on or before October 1 of the year when it is made, and shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law.

(2) Any person who has made a report of any estate or property presumed abandoned, as required by this chapter, shall, between November 1 and November 15 of each year, turn over to the department all property so reported; but if the person making the report or the owner of the property shall certify to the department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the department except on order of court. No person shall be required to surrender any property on a presumption of abandonment to the department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in

court claiming any property which has been reported under the provisions of this chapter, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the department, but shall have the duty of notifying the department of the pendency of such action.

(3) The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this chapter and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs (1942, c. 156, § § 1, 2)

### 393.120 (1612) SALE OF ABANDONED PROPERTY.

Any intangible personal property required by KRS 393.060 to 393.110 to be liquidated so as to permit payment to the department, shall be surrendered to the department and sold by it to the highest bidder at public sale at Frankfort, or in whatever city in the state affords, in its judgment, the most favorable market for the particular property involved. The department may decline the highest bid, and reoffer the property for sale if it considers the price offered insufficient. The sale shall be advertised at least one week in advance in a newspaper of general bona fide circulation in the county where the property was found or abandoned, and in the county where the sale is to be made. The sale shall be held at the courthouse door.

### 393.130 (1613) TRANSFEROR TO DEPARTMENT RELIEVED OF LIABILITY.

Any person who transfers to the department property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter.

### 393.140 (1614) CLAIM OF INTEREST IN PROPERTY SURRENDERED TO STATE.

(1) Any person claiming an interest in any property paid or surrendered to the state in accordance with KRS 393.020 to 393.050 who was not actually served with notice, and who did not appear, and whose claim was not considered during the action or at the proceedings that resulted in its payment to the state, may, within five years after the judgment, file his claim to it with the department.

(2) Any person claiming an interest in any estate or property paid or surrendered to the state in accordance with KRS 393.060 to 393.120, that was not subsequently adjudged under the procedure set out in KRS 393.230 to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee or other person entitled under the laws of this state relating to wills, descent and distribution to take the legal or equitable title, may file his claim to it at any time after it was paid to this state.

(3) The claimant shall, within fifteen days after filing any claim permitted under this section, publish notice of the claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the state. If there is no such newspaper, the claimant shall post the notice at the courthouse door and in three other conspicuous places in that county, and shall file proof of publication or posted notice with the department. No such claim shall be allowed until fifteen days after proof of the notice is received by the department at its offices in Frankfort.

"Bona fide circulation" defined, KRS 424.010

### 393.150 (1615) COMMISSIONER TO DETERMINE CLAIMS.

The commissioner shall consider any claim or defense permitted to be filed before the department and hear evidence concerning it. If the claimant establishes his claim, the commissioner shall, when the time for appeal or further legal procedure has expired, authorize payment to him of a sum equal to the amount paid into the State Treasury in compliance with this chapter. The decision shall be in

writing and shall state the substance of the evidence heard by the commissioner, if a transcript is not kept. The decision shall be a matter of public record.

### **393.160 (1615) APPEALS FROM DECISION OF COMMISSIONER.**

Any person dissatisfied with the decision of the commissioner may, within sixty days, appeal from it to the Franklin Circuit Court or file an action in that court to vacate the decision. In either event the proceedings shall be de novo, and no transcript of the record before the commissioner shall be required to be kept unless requested by the claimant. In such proceeding the commissioner shall be made a party defendant, and all other persons required by law to be made parties in actions in rem or quasi in rem shall be made parties. Any party adversely affected by the decision of the Franklin circuit court may appeal to the Court of Appeals within sixty days after the judgment. Upon an appeal the state shall not be required to make a supersedeas bond. The provisions of this section relating to the decision of the commissioner and appeals therefrom shall also apply to a decision of the commissioner rendered under authority of KRS 393.110.

### **393.170 (1616) PROPERTY IN FEDERAL CUSTODY; DETERMINATION OF WHETHER ESCHEAT HAS OCCURRED.**

Whenever any property escheated under this chapter by reason of actual abandonment, or death or presumption of death of the owner without leaving any person entitled to take the legal or equitable title under the laws of this state relating to wills, or descent and distribution, has been deposited with, or in the custody or under the control of, any Federal court in and for any district in this state, or in the custody of any depository, clerk or other officer of such court, or has been surrendered by such court or its officers to the United States Treasury, the circuit court of any county in which such Federal court sits shall have jurisdiction to ascertain whether an escheat has occurred, and to enter a judgment of escheat in favor of the state. This section does not authorize a judgment to require such

courts, officers, agents or depositories to pay or surrender funds to this state on a presumption of abandonment as provided in KRS 393.060 to 393.110.

### 393.180 (1618) PROCEEDINGS INSTITUTED BY COUNTY ATTORNEY ON RELATION OF COMMISSIONER.

Any legal proceeding to enforce KRS 393.020 to 393.050 and to recover any sum due the state thereunder shall be instituted, on the relation of the commissioner, by the county attorney of the county in which any such property is located. The petition and all necessary pleadings shall be sent to the commissioner for his signature and approval. The petition shall be accompanied by an affidavit of the county attorney, stating the facts on which it is based. For all other pleadings, there shall be a statement by the county attorney of the reason for the particular pleading.

### 393.190 (1618) ASSISTANT ATTORNEY-GENERAL TO AID COUNTY ATTORNEY.

On any action filed by a county attorney under the provisions of this chapter, the assistant Attorney-General provided for in KRS 15.140 shall offer assistance and suggestions to the county attorney in the preparation of the petition or any pleadings, and revise and correct them as he considers necessary, subject to the ultimate approval of the commissioner, when he is required to sign them.

### 393.200 (1618) COMPENSATION OF COUNTY ATTORNEY; COMMISSIONER MAY PERFORM HIS DUTIES.

If the county attorney performs all the duties imposed upon him by this chapter relating to enforcement of KRS 393.020 to 393.050 he shall be entitled to a fee of fifteen percent of any sum recovered in the proceeding, but shall be limited to five percent on intangible property recovered in excess of one thousand dollars. If the county attorney declines to perform the duties imposed upon him by this chapter, they may be performed by the commissioner, and the county attorney shall not be entitled to any fee. When he considers it to the best interest of the state, the com-

missioner may institute any action authorized by this chapter to be brought by the county attorney, or join the county attorney in the active prosecution of any such action. The county attorney shall be entitled to his fee in either instance if he does his duty.

Assistant Attorney-General assigned to Department of Revenue, KRS 15.140.

### **393.210 (1618) PROPERTY IN TWO OR MORE COUNTIES; COMPENSATION OF COUNTY ATTORNEYS.**

If the property of a person coming within the purview of KRS 393.020 to 393.050 is located in two or more counties, all the property may be included in one action. The county attorneys of all counties in which such property is located may join in the prosecution of the proceeding. Their fees shall be determined by the amount of money derived from the property located within their respective counties when possible to determine that figure. Otherwise, the courts shall determine their fees by equitable apportionment in accordance with the value of the property located in their respective counties.

### **393.220 (1618) DISPOSITION OF TANGIBLE PROPERTY DURING PROCEEDING.**

Pending the outcome of an action, the court may make such disposition of the land or tangible personal property involved as it considers best from the standpoints of use, rents, interest and profits. If the use of the property is given to the claimant by the court, he shall be held accountable for returns and profits arising from it if the state is successful in the proceeding.

### **393.230 (1619) PROCEEDING TO FORCE PAYMENT OF INTANGIBLE PROPERTY; TO ESTABLISH ACTUAL ABANDONMENT.**

(1) If any person or the agent of any court refuses to pay or surrender intangible property to the department as provided in KRS 393.060 to 393.110, an equitable proceeding may be brought on the relation of the commissioner to force payment or surrender. All property subject to KRS 393.060 to 393.110 may be listed and included in a single action.

(2) If any intangible property is turned over to the department on presumption of abandonment, in accordance with KRS 393.060 to 393.120, the commissioner may at any subsequent time institute proceedings to establish conclusively that it was actually abandoned, or that the owner has died and there is no person entitled to it.

### 393.240 (1619) ACTIONS MAY BE JOINED; SHALL BE IN EQUITY.

(1) If any person has property coming within the purview of KRS 393.020 to 393.050, and also of KRS 393.060 to 393.110, the actions required to be brought by the county attorney and the commissioner may be joined, but joinder is not required, and if separate actions are brought, they shall not be considered as coming within the rule against splitting a cause of action. The county attorney is not charged with the duty of enforcing sections KRS 393.060 to 393.120, 393.150 or 393.160.

(2) The procedure for all actions under this chapter shall be filed as equity actions and follow the procedure provided by the Civil Code of Practice, unless otherwise provided in this chapter.

### 393.250 (1620) EXPENSES, HOW PAID; COUNTY ATTORNEY TO COLLECT JUDGMENTS, DEDUCT FEE.

(1) Any necessary expense required to be paid by the state in administering and enforcing this chapter shall be paid out of appropriations made to the department.

(2) The county attorney shall act as agent of the department for the collection of all judgments recovered in actions prosecuted by him under this chapter. He shall deduct the fee allowed him and promptly remit the remainder to the department with such information relating thereto as the department requires.

### 393.260 (1621) LIMITATION OF STATE'S ACTION.

Any action brought by the state under this chapter shall be brought within fifteen years from June 12, 1940 or from the time when the cause of action accrued, whichever is the later date.

### **393.270 (1622) PERSON UNDER DISABILITY, EXTENSION.**

Any person under disability affected by this chapter shall have five years after the disability is removed in which to take any action or procedure or make any defense allowed to one sui juris.

### **393.280 (1622-1) EXAMINATION OF RECORDS; PROMULGATION OF RULES; DELEGATION OF COMMISSIONER'S AUTHORITY.**

(1) The department, through its employees, may examine all records of any person where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter.

(2) The commissioner may promulgate any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writing to any regular employee of the department authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

### **393.290 (1622-1) CIVIL ACTION TO ENFORCE PRODUCTION OF REPORTS, SURRENDER OF PROPERTY.**

(1) The department may require the production of reports, or the surrender of property as provided in this chapter by civil action, including an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent of all amounts that he is ultimately required to surrender. This penalty shall not exceed five hundred dollars.

(2) Any person who in good faith contests the applicability of this chapter to him may be relieved of the threat of any penalty by posting a compliance bond in an amount and of surety sufficient to the court.

### **393.300 (1623-1) RESTRICTION ON ESCHEAT OF REAL PROPERTY HELD BY LENDING CORPORATION UNDER SUPERVISION.**

No person shall institute proceedings to escheat real property the title to which was acquired by any lending

corporation in satisfaction of debts previously contracted in the course of its business, or that it purchases under a judgment for any such debt in its favor, if such lending corporation is under the supervision of the Division of Banking of this state, Comptroller of Currency of the United States or any other duly constituted supervising banking authority, state or Federal, without first obtaining the consent of the supervising authority having supervision over that corporation.

### 393.990 (1622-1) PENALTIES.

Any person who refuses to make any report as required by this chapter shall be fined not less than fifty dollars nor more than two hundred dollars, or imprisoned for not less than thirty days nor more than six months, or both.

**Acts of the General Assembly, 1940, Chap. 79 (H. B. 321),  
P. 333.**

"An Act relating to all classes of property actually or presumptively subject to escheat; providing the terms upon which presumption of abandonment of property and presumption of the death of persons shall be determined; providing how and when said property may be escheated to the Commonwealth of Kentucky, providing for the reduction of all such property to cash, transferring the possession of same to the Treasurer of Kentucky; providing how any person who is legally entitled thereto may recover same from the Treasurer; providing that any person transferring property to the Commonwealth as required by this Act shall be relieved of liability to the owner thereof or reimbursed for any liability or damage incurred by complying with this Act; defining certain words; providing for reports and examination of records; providing for the administration and enforcement of this Act, and for an Assistant Attorney General as incident thereto; providing fines, penalties, and imprisonment for failure to comply with this Act; providing that if any provision of this Act shall be held unconstitutional that it is the Legislative intent that all other provisions thereof shall remain in force and effect; repealing sections 1610 to 1623, inclusive of Carroll's Kentucky Statutes, Baldwin's 1936 Revision; repealing all Acts and parts of Acts in conflict with this Act; repealing Chapter 168, Acts of the Regular Session of the 1938 General Assembly of the Commonwealth of Kentucky; and repealing, amending and re-enacting sections 1606, 1607, 1608, and 1609 of Carroll's Kentucky Statutes, Baldwin's 1936 Revision.

"Be it enacted by the General Assembly of the Commonwealth of Kentucky:

"Sec. 1. That sections 1610 to 1623 inclusive of Carroll's Kentucky Statutes, 1936 edition, and Chapter 168, Acts of the Regular Session of the 1938 General Assembly be, and the same are hereby repealed.

"Sec. 2. (Ky. St. 1605a) Whenever used in this Act, unless the context requires otherwise, the word 'person' shall mean and include any individual, state and national bank, partnership, joint stock company, business, trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

"Whenever used in this Act, unless the context requires otherwise, the word 'claim' shall mean to demand payment or surrender of property from the person whose duty it is to pay the claimant, or surrender to him the property involved.

"Sec. 3. That section 1606 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted so that when amended and re-enacted it shall read as follows:

(1606) "That part of estates or property having a situs in this Commonwealth, not disposed of by will of persons who have died, or may hereafter die without heirs or distributees entitled to the same; or which have been or may hereafter be devised to any person, or any heir or distributee or devisee of such person or of the testator, who has not claimed the same or shall not claim the same within eight (8) years after such death, shall vest in the Commonwealth, subject to all legal and equitable demands on same. All such property shall be liquidated and the proceeds thereof, less costs, fees, and expenses incidental to all legal proceedings of such liquidation shall be paid to the Department of Revenue. Any estates or property except a perfect title to a corporeal hereditament, which estates or property have been abandoned by the owner thereof, shall also vest in the Commonwealth, subject to all legal and equitable demands on same. All such property shall be liquidated and the proceeds thereof, less costs, fees, and expenses incidental to all legal proceedings of such liquidation shall be paid to the Department of Revenue.

"Sec. 4. That section 1607 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted so that when amended and re-enacted it shall read as follows:

(1607). "The personal representatives of persons, whose estates or a part of whose estates are not distributed by

will, and who died without heirs or distributees entitled to same, shall settle their accounts within one (1) year after qualifying as such and pay over to the Department of Revenue the proceeds of all personal estate, first deducting the proper legal liabilities of the estate.

“(1) If the whole personal estate cannot be settled and the accounts closed within one (1) year, the settlement as far as practicable, shall then be made and the proceeds paid over to the Department of Revenue, and the residue shall be so settled and paid over as soon thereafter as can be properly done.

“(2) The personal representative shall take possession of the real estate of such decedent not disposed of by his will, and rent out the same from year to year until it is otherwise legally disposed of, and pay the net proceeds to the Department of Revenue.

“(3) The personal representative shall also make out and transmit to the Department of Revenue a description of the quantity, quality, and estimated value of such real estate and its probable annual profits.

“Sec. 5. That section 1608 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted, so that when amended and re-enacted it shall read as follows:

(1608) “If any devisee or his heirs, advisee or distributee, or any heir or distributee of a testator has failed or shall hereafter fail for eight (8) years to claim his legacy the personal representative of such testator or other person having the same in possession shall, after deducting the legal liabilities thereon, pay and deliver over such legacy, whether the same be real or personal estate, and the net profits thereof to the Department of Revenue.

“Sec. 6. That section 1609 of Carroll's Kentucky Statutes, 1936 edition, be repealed, amended, and re-enacted, so that when amended and re-enacted it shall be read as follows:

(1609) “When any person owning property or estates having a situs in this Commonwealth is not known to be living for seven (7) successive years, and neither said owner, his heirs, devisees, or distributees can be located or

proved to have been living for seven (7) successive years, such person shall be presumed to have died without heirs, devisees, or distributees, and both his real and personal estate shall be liquidated and the proceeds, less costs incident to the liquidation and any legal proceedings, and less the liabilities which have been properly claimed and approved against same, shall be paid to the Department of Revenue.

(1610) "Sec. 7. When the owner or owners (whether such ownerships be legal, beneficial, equitable, or otherwise) of deposits payable on demand in any bank or trust company (either state or national) within this Commonwealth, have not or shall not within ten (10) successive years next preceding the date as of which reports are required to be made by section 8 of this Act, (a) negotiated in writing with the bank or trust company in respect thereto, or (b) been credited with interest on the pass book or certificate of deposit on his or their request, or (c) had a transfer, disposition of interest, or other transaction noted of record in the books or records of such bank or trust company, or (d) increased or decreased the amount of the deposit, such deposit and the interest thereon shall be presumed abandoned.

"When the owner or owners (whether such ownerships be legal, beneficial, equitable, or otherwise) of deposits other than those payable on demand in any bank or trust company (either state or national) within this Commonwealth, have not or shall not within twenty-five (25) successive years next preceding the date as of which reports are required to be made by section 8 of this Act, (a) negotiated in writing with bank or trust company in respect thereto, or (b) been credited with interest on the passbook or certificate of deposit on his or their request, or (c) had a transfer, disposition of interest, or other transaction noted of record in the books or records of such bank or trust company, or (d) increased or decreased the amount of the deposit during said period, such deposits and the interest thereon shall be presumed abandoned.

"All deposits of money, stocks, bonds, or other credits of any kind whatsoever made to secure payment for services

rendered or to be rendered, or to guarantee the performance of services or duties, or to protect against damage or harm and the increments thereof, shall be presumed abandoned unless claimed by the person entitled thereto within ten (10) years after the occurrence of such event as would obligate the holder or depository to return the same or the equivalent thereof to the proper owner or claimant.

"All dividends, stocks, and bonds and the increments thereof, all monies and credits and the increments thereof, all claims for monies and credits and the increments thereof, and all intangible personal estate or property whatsoever and the increment thereof, held within this Commonwealth by any person for the benefit of another person shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within ten (10) years from the time the holder, trustee, debtor, or other responsible person became obligated to return the same or the equivalent thereof to the proper owner or claimant. If the increments or benefits payable on any instrument are not claimed within the time and manner prescribed in this paragraph, the instruments or evidence of the debt or obligation shall likewise be presumed abandoned.

"All estate or property paid into any court of this Commonwealth for distribution and the increments thereof shall be presumed abandoned if not claimed within five (5) years after the estate was so paid into court, or as soon after said (5) year period as all claims filed in connection therewith shall have been disallowed or settled by the court.

"None of the provisions of this Act shall apply to bonds of counties, cities, school districts, or other tax levying subdivisions of this Commonwealth.

(1611) "Sec. 8. It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or other capacity coming within the purview of section 7 of this Act, to report annually to the Department of Revenue as of July 1, all property held by them declared by this Act now to be presumed abandoned, and all property which shall hereafter become presumed abandoned under

the provisions of this Act. The report shall be filed in the offices of the Department of Revenue in Frankfort on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the Department of Revenue may require for the administration of this Act. Such persons or court as may have made report of any estate or property presumed abandoned, as required in this Act, shall, within four (4) months after July 1, turn over to the Department of Revenue all property so reported; except, that if the person making such report, or any other person or persons are able to prove by competent evidence on hearing before the Commissioner of Revenue that the owner or person entitled to the property has subsequently within said four (4) months transacted business resulting in writing of record in the books of the person or court making the report, which shows the owner or person entitled to the estate or property has knowledge thereof and still claims his legal or equitable right thereto or has by other competent evidence clearly manifested such knowledge or claim, it shall not be the duty of the person or court making such report or in possession of such property to surrender it to the Department of Revenue.

(1612) "Sec. 9. Any intangible personal estate or property required by sections 7 and 8 of this Act to be liquidated so as to permit payment thereof to the Department of Revenue, shall be surrendered to the Department of Revenue and sold by the Department of Revenue at public sale at Frankfort, or in such other city in the Commonwealth as may in its judgment afford the most favorable market for the particular property involved, to the highest bidder; provided that it may decline the highest bid and reoffer the property for sale if it deems the price offered insufficient. Such sale shall be advertised at least one week before the date of the sale in a newspaper of general bona fide circulation in the county where said property was found or abandoned, and in the county where the sale is to be made, and the sale shall be held at the courthouse door.

(1613) "Sec. 10. Any person who shall transfer to the Department of Revenue, property to which the Commonwealth is entitled under the provisions of this Act, is hereby relieved of any liability to the owner of such property arising from such transfer; however, if any such person cannot be relieved of such liability by the provisions of this section, the Commonwealth shall reimburse such person for all liability to the owner of the property or estate or damage incurred by reason of compliance with the provisions of this Act.

(1614) "Sec. 11. Any person claiming an interest in estates or property paid or surrendered to the Commonwealth in accordance with the provisions of sections 3, 4, 5, or 6 of this Act, who was not actually served with notice and who did not appear, and whose claim was not considered during the action or at the proceedings which resulted in the payment of same to the Commonwealth, may within five (5) years after the judgment file his claim thereto with the Department of Revenue.

"Any person claiming an interest in estates or property paid or surrendered to the Commonwealth in accordance with sections 7, 8, or 9 of this Act, which was not subsequently adjudged under the procedure set out in section 16 of this Act to have been actually abandoned, or owned by a decedent who had no heir, distributee, devisee, or other person entitled under the laws of this Commonwealth relating to wills, descent and distribution, to take the legal or equitable title to such estate or property, may file his claim thereto at any time after same was paid to this Commonwealth.

"The claimant shall within fifteen (15) days after filing any claim permitted under this section publish notice of such claim in a newspaper of general bona fide circulation in the county in which the property was held before being transferred to the Commonwealth as herein provided. If there be no such newspaper, the claimant shall post such notice at the courthouse door and in three other conspicuous places in said county, and shall file proof of such publication or posted notice with the Department of Revenue. No such claim shall be allowed until fifteen (15) days after

proof of such notice is received by the Department of Revenue at its office in Frankfort.

(1615) "Sec. 12. It shall be the duty of the Commissioner of Revenue to consider any claim and/or defense permitted to be filed before it and to hear evidence in respect thereto. If the claimant establishes his claim, the Commissioner of Revenue shall, when the time for appeal or further legal procedure herein provided has expired, authorize payment to him of a sum equal to the same amount which was paid into the Treasury in compliance with this Act. The decision shall be in writing and shall state the substance of the evidence heard by the Commissioner of Revenue if a transcript thereof be not kept and such decision shall be a matter of public record.

"Any person, petitioner, or claimant dissatisfied with the decision of the Commissioner of Revenue may within sixty (60) days, appeal from such decision to the Franklin Circuit Court or file an action in said court to vacate such decision. In either event the proceedings shall be de novo, and no transcript of the record before the Commissioner of Revenue shall be required to be kept unless requested by the claimant. In any such proceeding before the Franklin Circuit Court, the Commissioner of Revenue shall be made a party defendant, and all other persons required by law to be made parties defendant or plaintiff and served with actual or constructive notice in rem or quasi in rem actions shall be so treated. Any party adversely affected by the decision of the Franklin Circuit Court may appeal to the Kentucky Court of Appeals in the manner now generally provided by law, but such appeal must be commenced within sixty (60) days after the judgment. However, the Commonwealth shall in no event be required to make a supersedeas bond. The provisions of this section which relate to the decision of the Commissioner of Revenue and appeals therefrom shall also apply to a decision of the Commissioner rendered under authority of section 8 of this Act requiring payment to the Department of Revenue over the protest of the holder or claimant of the property.

(1616) "Sec. 13. Whenever any estate or property which may be escheated under the provisions of this Act by

reason of actual abandonment, or death and for presumption of death of the owner without an heir, distributee, devisee or other person entitled to take the legal or equitable title to such estate or property under the laws of this Commonwealth relating to wills, or descent and distribution, has or shall hereafter be deposited with, or in the custody of, or under the control of any court of the United States in and for any district within this Commonwealth, or in the custody of any depository, clerk or other officer of such court, or shall have been surrendered by such court or its officers to the United States Treasury, the circuit court of this Commonwealth in any county in which such court of the United States sits, shall have jurisdiction to ascertain whether an escheat has occurred, and to enter a judgment of escheat in favor of the Commonwealth. Provided, however, this section shall not be construed as authorizing a judgment to require such courts, officers, agents, or depositories to pay or surrender such funds to the Commonwealth on a presumption of abandonment as provided in sections 7 and 8 of this Act.

(1617). "Sec. 14. To aid in the enforcement and administration of the provisions of this Act, the Attorney General shall, with the approval of the Governor, appoint an additional Assistant Attorney General, having at least the qualifications of the Sixth Assistant Attorney General, and assign him to the Department of Revenue. It shall be the special duty of such Assistant Attorney General to represent the Commonwealth at the hearings required by this Act to be held before the Commissioner of Revenue to consider claims filed pursuant to section 11 of this Act; to advise the Department of Revenue, county attorneys, and all other inquiries, with respect to questions arising under the provisions of this Act; to aid in the prosecution of all other actions or proceedings authorized by this Act when so directed by the Commissioner of Revenue or the Attorney General; and to perform such other duties as are imposed on him by any provisions of this Act. Provided, however, his opinions shall be subject to the approval of the Attorney General in the same manner as is such work of other Assistant Attorney General now established by law,

and he shall also have the other ordinary powers and duties of an Assistant Attorney General.

"He shall receive a salary not exceeding four thousand dollars (\$4,000) a year, to be fixed by the Attorney General and the Commissioner of Revenue as provided by law, which shall be paid on authorization of the Commissioner of Revenue in the same manner as employees of the Department of Revenue are generally paid.

(1618) "Sec. 15. All legal proceedings to enforce sections 3, 4, 5, and 6 of this Act shall be instituted on the relations of the Commissioner of Revenue.

"It shall be the duty of the county attorney of a county in which any estate or property is located, coming within the purview of sections 3, 4, 5, or 6 of this Act, to institute such legal proceedings as are necessary to enforce the provisions of said sections and to recover such sums as are due the Commonwealth thereunder. The petition and all pleadings necessary to be filed in such proceedings shall be on the relation of the Commissioner of Revenue and shall be sent to the Commissioner of Revenue for his signature and approval. The petition shall be accompanied by an affidavit of the county attorney, stating the facts on which it is based. For all other pleadings, there shall be a statement by the county attorney of the reason for the particular pleading.

"On any action or proceeding filed by a county attorney under the provisions of this Act, it shall be the duty of the Assistant Attorney General, provided for in section 14 of this Act, to offer assistance and suggestions to the county attorney in the preparation of the petition or any pleadings, and to revise and correct same as he may deem necessary, subject to the ultimate approval of the Commissioner of Revenue, when he is required to sign same.

"If the estate or property of a person coming within the purview of sections 3, 4, 5, or 6 of this Act is located in two or more counties, all such property may be included in one action or proceeding; provided, however, that the county attorneys of all counties in which such property is located may join in the prosecution of the action or proceeding, and their fees shall be determined by the amount of money

derived from the property located within their respective counties when possible to determine such figure; otherwise, the courts shall determine their fees by equitable apportionment in accordance with the value of the property which is located in their respective counties.

"If the county attorney performs all the duties imposed upon him by this Act relating to enforcement of the provisions of sections 3, 4, 5, or 6, he shall be entitled to a fee of fifteen per cent (15%) of any sum recovered in such proceeding, except that the county attorney's fee shall be limited to five per cent (5%) on intangible property recovered in excess of one thousand dollars (\$1,000).

"In the event that a county attorney declines to perform the duties imposed upon him by this Act, they may be performed by the Commissioner of Revenue and the county attorney shall not be entitled to any fee. The Commissioner may, when he deems it to the best interest of the Commonwealth, institute any action authorized by this Act to be brought by the county attorney, or join the county attorney in the active prosecution of any such action. The county attorney shall be entitled to his fee in either instance if he does his duty.

"Pending the outcome of an action or court proceeding, the court may make such disposition of the land or tangible personal property involved as may seem best from the standpoints of use, rents, interest, and profits. In the event the use of the property is given to the claimant by the court, such claimant shall be held accountable for returns and profits arising from such use, if the Commonwealth be successful in such proceeding.

(1619) "Sec. 16. In the event any person refuses to pay or surrender voluntarily intangible estate or property to the Department of Revenue, as provided in sections 7 or 8 of this Act, or if the agent of any court refuses so to do, a proceeding may be brought on the relation of the Commissioner of Revenue as an equity action in a court of competent jurisdiction to force such payment or surrender of property, and all property subject to said sections 7 and 8 may be listed and included in a single action.

"If intangible estates or property are turned over to the Department of Revenue on presumption of abandon-

ment, in accordance with sections 7, 8, or 9 of this Act, the Commissioner of Revenue may at any subsequent time institute proceedings in a court of competent jurisdiction to establish conclusively that such estate or property was actually abandoned, or that the owner thereof is dead and there are no heirs, devisees, distributees, or any other persons entitled to succeed to the title of same.

"In the event a particular person or persons may have property coming within the purview of sections 3, 4, 5, or 6 of this Act, and also sections 7 or 8 of this Act, the actions herein required to be brought by the county attorney and the Commissioner of Revenue may be joined, but joinder is not required, and if separate actions shall be brought, they shall not be considered as coming within the rule against splitting a cause of action. The county attorney shall not be charged with the duty of enforcing sections 7, 8, 9 and 12 of this Act.

"The procedure of any and all actions or proceedings permitted or necessary under this Act to be filed in a court of competent jurisdiction shall be the same as that now provided in Carroll's Kentucky Civil Code of Practice, unless provided differently herein, except that all such actions or proceedings shall be filed as equity actions.

(1620) "Sec. 17. All money received by the Department of Revenue under the provisions of this Act shall be deposited with the State Treasury and credited to the account of the General Expenditure Fund; provided, however, that ten per cent (10%) of such sum so received during the fiscal year beginning July 1, 1940, and ten per cent (10%) of such sum so received during the fiscal year beginning July 1, 1941, shall be added to and made a part of the appropriation available to the Department of Revenue for the respective fiscal years. After June 30, 1942, the legislature shall make provision for the administration of this Act in the regular budgetary appropriation made for the Department. All the expense necessary and required to be paid by the Commonwealth in administering and enforcing this Act shall be paid, out of the funds available to the Department of Revenue, and such expenses shall be paid in the same manner as other claims upon the Commonwealth are paid.

"The county attorney shall act as agent of the Department of Revenue for the collection of all judgments recovered in actions prosecuted by him under the provisions of this Act and he shall deduct the fee allowed him for his services performed pursuant to this Act, and promptly remit such collections to the Department of Revenue, with such information relating thereto as the Department may require.

(1621) "Sec. 18. Any action permitted by this Act to be brought by the Commonwealth must be brought within fifteen (15) years from the effective date of this Act or from the time when the cause of action accrued, whichever is the later date.

(1622) "Sec. 19. Any person under disability affected by this Act shall have five (5) years after the disability is removed in which to take any action or procedure or make any defense allowed to one sui juris.

(1622-1) "Sec. 30. The Department of Revenue, through its employees, is also authorized to examine all records of state and national banks or trust companies, corporations, companies, partnerships, agencies, and persons where there is reason to believe that there has been or is a failure to report property which should be reported under the provisions of this Act.

"The Commissioner of Revenue shall have authority to promulgate such reasonable rules and regulations as are necessary for the enforcement of this Act, and to govern hearings provided in this Act to be held before him. Provided, however, he may delegate in writing to any regular employee of the Department of Revenue authority to perform any of the duties imposed on him by this Act excepting the promulgation of rules and regulations.

"Any person, or representative thereof refusing to make any report as required by this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars (\$50) or more than two hundred dollars (\$200), or imprisoned not less than thirty (30) days or more than six (6) months, or both so fined and imprisoned. The Department of Revenue shall also have authority, as herein provided, to require such reports, or the surrender of

such property, by civil action, including an action in the nature of a bill of discovery, in which case such person shall be required to pay a penalty equal to ten per cent (10%) of all amounts which he may ultimately be required to surrender, but in no event shall said penalty exceed five hundred dollars (\$500).

"Any person bona fide contesting the applicability of this Act to him may be relieved of the threat of any fine or penalty by posting a compliance bond in an amount and of surety sufficient to the court.

"Sec. 21. All Acts and parts of Acts in conflict with this Act are, to the extent of such conflict, hereby repealed.

"Sec. 22. It is the intent and purpose of the General Assembly of this Commonwealth of Kentucky to enact each and every provision of this Act separately, so that in the event the courts for any reason should hold any provision thereof void, or the application of any provision thereof void, then all other provisions or the application of any or all other provisions shall be deemed to remain in full force and effect; and it is hereby expressly declared that the General Assembly would have enacted any part or provision of this Act, irrespective of any other part or provision thereof.

"Approved March 1, 1940 by Governor Johnson."

**Sec. 8, 1942 Amendment.**

"It shall be the duty of all state and national banks, trust companies, or other persons, and courts of this Commonwealth or the agents thereof, whether holding estates or property as bailee, depository, debtor, trustee, executor, liquidator, administrator, distributor, receiver, or in any other capacity coming within the purview of section 7 of this Act, to report annually to the Department as of July 1, all property held by them declared by this Act to be presumed abandoned. The report shall be filed in the offices of the Department on or before September 1 of each year for the preceding July 1, and shall give the name of the owner, his last known address, the amount and kind of property, and such other information as the Department may require for the administration of this Act.

"The report shall be made in duplicate; the original shall be retained by the Department, and the copy shall be mailed to the sheriff of the county where the property is located or held. It shall be the duty of the sheriff to post said copy on the court house door or the court house bulletin board. The sheriff shall immediately certify in writing to the Department the date when said copy was posted. Said copy must be posted on or before October 1 of the year when it is made, and shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law.

"Any person who has made a report of any estate or property presumed abandoned, as required by this Act, shall, between November 1 and November 15 of each year, turn over to the Department all property so reported; but if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exist or never did exist, or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then, the person reporting or holding the property shall not be required to turn the property over to the Department except on order of court. No person shall be required to

surrender any property on a presumption of abandonment to the Department if the period of time provided by any statute of limitation applicable to the owner's rights as against the holder has expired unless the court orders him to do so. If a person files an action in court claiming any property which has been reported under the provisions of this Act, the person reporting or holding such property shall be under no duty while any such action is pending to turn the property over to the Department, but shall have the duty of notifying the Department of the pendency of such action.

"The person reporting or holding the property or any claimant thereof shall always have the right to a judicial determination of his rights under this Act and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not and may include in one petition all such property within the jurisdiction of the court in which the action is brought provided the property of different persons is set out in separate paragraphs."

## COURT OF APPEALS OF KENTUCKY

June 15, 1943

ANDERSON NATIONAL BANK, ETC., *Appellant*,

vs.

H. CLYDE REEVES, INDIVIDUALLY, ETC., *Appellee*.

Appeal from Franklin Circuit Court

Hon. W. B. Ardery, Judge

**Opinion by Chief Justice Fulton—Affirming.**

This is the second appeal of this case. The opinion on the first appeal, reported in 293 Ky. 735, 170 S. W. (2d) 350, upheld the validity of the principal sections of Chapter 79 of the Acts of 1940 as amended by Chapter 156 of the Acts of 1942 (KRS 393.010 et seq.) and affirmed the judgment of the lower court on the appeal but reversed it on the cross-appeal.

On the return of the case to the lower court judgment was entered in conformity with this opinion. This appeal is from that judgment.

We are bound by the opinion on the first appeal, whether it be right or wrong, under our familiar law of the case rule. We have considered the contentions 1) that the Act in question conflicts with the National Banking Act and 2) that it is violative of the due process clause of the 14th Amendment to the Federal Constitution and find the contentions without merit.

Since the judgment is in conformity with the former opinion it is affirmed.

**Attorneys for Appellant:**

CHARLES W. MILNER, Louisville, Kentucky.

LEO T. WOLFORD, Louisville, Kentucky.

BULLITT &amp; MIDDLETON, Louisville, Kentucky.

**Attorneys for Appellee:**HUBERT MEREDITH, *Attorney General*, Frankfort, Kentucky.EARL S. WILSON, *Asst. Atty. Gen.*, Frankfort, Kentucky.A. E. FUNK, *Asst. Atty. Gen.*, Frankfort, Kentucky.

## COURT OF APPEALS OF KENTUCKY

December 18, 1942

ANDERSON NATIONAL BANK, ET AL., *Appellant*,  
*vs.*

H. CLYDE REEVES, individually and as Commissioner of  
 Revenue, *Appellee*.

Appeal from Franklin Circuit Court  
 Hon. Wm. B. Ardery, Judge

**Opinion by Judge Fulton—Affirming on the Original Appeal and Reversing on the Cross-Appeal.**

This appeal brings in question the correctness of a judgment holding valid certain parts of Chap. 79 of the Acts of 1940 (K.R.S. 393.010 et seq.) as amended by Chap. 156 of the Acts of 1942, dealing with escheats and with the disposition of certain classes of property declared to be presumed abandoned. By the cross-appeal it is sought to reverse the judgment in so far as it adjudged certain portions of the same Acts invalid.

By sections 3 to 6 of the Act inclusive (K.R.S. sections 393.020, 393.030, 393.040 and 393.050) certain classes of property are made subject to escheat and it is made the duty of the Commissioner of Revenue to institute proceedings to vest title to such property in the Commonwealth, the procedure to be in accordance with the Civil Code. Where title to such property is vested in the Commonwealth pursuant to such proceedings, any person claiming an interest therein, and who was not actually served with notice and did not appear in the proceedings, may within five years after the judgment file his claim with the Department of Revenue. Appropriate procedure is provided for the prosecution of such claims and right of appeal is given to the Franklin Circuit Court and to this court. These portions of the Act are not in controversy although it is suggested by appellants that the entire Act should be declared invalid.

They are mentioned, however, for the purpose of giving a general idea as to the scope of the Act.

So far as material to this controversy section 7 of the Act (K.R.S. 393.060 and 393.070) provides in substance:

(1) That where the owner of bank deposits payable on demand has not for ten successive years next preceding the date for making reports as required by the Act (a) negotiated in writing with the bank or trust company concerning it, or (b) been credited with interest on the pass book or certificate of deposit on his request, or (c) had a transfer, distribution of interest, or other transaction noted of record in the books or records of the bank or trust company, or (d) increased or decreased the amount of deposit, such deposits shall be presumed abandoned.

(2) The same presumption of abandonment arises with respect to deposits not payable on demand except that the period of time is twenty-five years instead of ten.

Section 8 (K.R.S. 393.110) provides in substance that all persons holding property declared to be presumed abandoned must report same to the Department of Revenue annually as of July 1, the report being due on or before September 1 of each year. A copy of the report is required to be posted on the courthouse door or bulletin board on or before October 1 and it is provided that such publication "shall be constructive notice to all interested parties and shall be in addition to any other notice provided by statute or existing as a matter of law." The person reporting the property is required to turn it over to the Department of Revenue between November 1 and November 15 except that "if the person making the report or the owner of the property shall certify to the Department by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist or shall certify the existence of any fact or circumstance which has a substantial tendency to rebut such presumption, then the person reporting or holding the property shall not be required to turn the property over to the Department except in order of court . . . . The person reporting or holding the property or any claimant thereof shall always have

the right to judicial determination of his rights under this Act and nothing therein shall be construed otherwise; and the Commonwealth may institute an action to recover such property as is presumed abandoned whether it has been reported or not . . . ."

Section 17 (K.R.S. 393.250) provides that all monies received by the Department of Revenue under the provisions of the Act must be deposited with the State Treasurer and credited to the account of the General Expenditure Fund.

Section 11 (K.R.S. 393.140) provides that any person claiming an interest in any property turned over to the state on the ground that it was presumed abandoned (provided it was not subsequently adjudged to have been actually abandoned) may claim it "at any time after same was paid to this Commonwealth"; and, even where actual abandonment was adjudged subsequent to payment to the state, any person claiming an interest, who was not actually served with notice and who did not appear, and whose claim was not considered during the proceedings, may within five years after the judgment file his claim with the Department.

Section 12 (K.R.S. 303.140) provides that if a claimant establishes his right to property presumed abandoned the Commissioner of Revenue must authorize payment to him of a sum "equal to the same amount which was paid in to the State Treasury in compliance with this Act".

The claimant is required to publish notice of his claim, within fifteen days after filing it, in a newspaper in the county in which the property was held before being transferred to the Commonwealth.

Section 10 (K.R.S. 393.130) provides: "Any person who transfers to the department property to which the state is entitled under this chapter shall be relieved of any liability to the owner arising from that transfer. The state shall reimburse any person who cannot be relieved of such liability by this section for all liability to the owner of the property or estate or damage incurred by reason of compliance with this chapter."

Section 16 (K. R. S. 393.230) provides that if any one refuses to pay or surrender property presumed abandoned to the Department as required by the Act, an equitable proceeding may be brought on relation of the Commissioner to force payment or surrender. It is further provided that if property is turned over to the Department on presumption of abandonment the Commissioner may at any subsequent time institute proceedings to establish conclusively that it was *actually* abandoned, or that the owner has died and there is no person entitled to it. It is also provided in this section that all actions mentioned under the Act shall be filed as equity actions and follow the procedure provided by the Civil Code of Practice, unless otherwise provided.

This action was filed under the Declaratory Judgment Act by the Anderson National Bank, suing on behalf of itself and all others similarly situated and on behalf of depositors in banks, to test the validity of the Act and an injunction was sought to prevent the appellees from enforcing it—the appellees do not question the right of appellants to challenge the validity of the Act in the representative status assumed.

The trial court adjudged that the part of the Act requiring a voluntary delivery of the property to the state was unconstitutional because of the absence of provision for adequate notice to the owners of the property. Accordingly, the appellees were enjoined from insisting on or accepting a delivery of property presumed abandoned without first filing a suit and procuring a judgment for delivery thereof. It was adjudged that the Act was valid in so far as it required reports of property presumed abandoned and in so far as it authorized the filing of actions to compel the surrender of property declared to be presumed abandoned. Accordingly, the trial court declined to enjoin appellees from requiring reports of property presumed abandoned and also declined to enjoin appellees from filing suits to recover property presumed abandoned, whether reported or not.

Appellants question the correctness of the judgment in holding the indicated portions of the Act valid and the appellees, by cross appeal, seek a reversal of the judgment

in so far as it holds any part of the Act unconstitutional or enjoins enforcement thereof:

Appellants advance the propositions 1) that the provisions of the Act requiring delivery to the State of deposits declared to be presumed abandoned constitute, in effect, an attempted escheat of such deposits, which is invalid because of the absence of notice and judicial determination, 2) that even if valid as to deposits made subsequent to the Act such provisions are ineffective as to prior deposits because, when so applied, such provisions impair the obligation of the contract of deposit, and 3) that in any event such provisions, even though valid as to state banks, are invalid as to national banks. These propositions will be considered in the order named.

Appellants' brief contains an elaborate and scholarly treatise on the origin, history and purposes of prior escheat laws of this state as a basis for their argument that the Act is unconstitutional in so far as it requires a delivery to the state of deposits declared to be presumed abandoned without a judicial determination to that effect made after adequate notice. And, were we dealing with an out and out escheat act, their argument would be most persuasive—we would unhesitatingly say that there can be no escheat except pursuant to judicial determination made after legal notice.

But such is not the case, notwithstanding appellants' vehement insistence to the contrary and notwithstanding the fact that the title of the Act recites that it relates to property actually or presumptively subject to escheat. Certain parts of the Act, as indicated above, do relate to out and out escheat but before title can become vested in the state judicial determination is necessary and such determination must be made after adequate notice since the proceedings are required to be according to the Civil Code.

But the portions of the Act dealing with dormant bank deposits do not provide for a seizure of the deposits and vesting of title or ownership in the state but merely for a transfer of property which may later be adjudged to be subject to escheat, and these provisions are for the benefit and protection of both the depositors and the state. As said by the Supreme Court in *Provident Institution for Savings*

v. Malone, 221 U. S. 660, 31 S. Ct. 661, 55 L. Ed. 899, 31 L. R. S. (N. S.) 1129, in discussing a somewhat similar statute, "the statute proceeds on the general principle that corporations may become involved, or may be dissolved; or that, after long lapses of time, changes may occur which would require someone to look after the rights of the depositor. The statute deals with accounts of an absent owner, who has so long failed to exercise any act or ownership as to raise the presumption that he has abandoned his property. And if abandoned, it should be preserved until he or his representative appear to claim it; or, failing that, until it should be escheated to the state. The right and power so to legislate is undoubted."

The good faith of the Legislature cannot be questioned and it is to be assumed that the Act was for the protection of the deposits as well as for the benefit of the state. That this is a justifiable assumption is clearly revealed in the provision giving the depositor (and this, of course, includes his legal representatives) the right, without limit of time, to make a claim and receive a return of the deposit provided there has not been a judicial determination of actual abandonment—and even after such judicial determination five years is given for the same purpose to any person who was not actually served with notice and did not appear in the proceedings.

~~In this respect both~~ the rights of the depositor and the bank are fully protected by giving to the depositor a right of action against the state, which is conclusively presumed always to be able to pay, and by the provision relieving the bank of liability to the depositor upon compliance with the Act, fortified by the further provision for reimbursement to the bank by the state for any liability incurred by reason of compliance with the Act. The mere taking away of the depositor's right of action against the bank constitutes no substantial deprivation of property when, in lieu thereof, he is afforded an action against the Commonwealth, the most perfect of all protection.

Nor does the requirement that the owner making claim must publish notice of his claim in a newspaper within fifteen days after filing it impose such a burden as to constitute a substantial deprivation. This is a reasonable re-

quirement and is for the benefit of depositors whose deposits have been turned over to the state. Publicity is thus given to such claims in order that the true owners may be put on notice if a false claim is made.

It is our conclusion that the controversial portions of the Act are reasonable (as to the time provided as well as to the procedure) and that they would not constitute a deprivation of property without due process of law in violation of the Constitution of the United States even in the absence of the provision requiring notice to be posted at the courthouse door. Accordingly, it becomes unnecessary to discuss the sufficiency of such notice.

The conclusion we have reached is fully supported by *Comth. of Pennsylvania v. Dollar Savings Bank*, 259 Pa. 138, 102 Atl. 569, 1 A. L. R. 1048; *State v. Security Sav. Bank*, — Calif. App. —, 154 Pa. 1070; *Provident Institution for Savings v. Malone*, supra, and *Brookline Borough Gas Co. v. Bennett*, 227 N. Y. S. 203. The latter case upheld a similar act dealing with consumer deposits with utility companies (a class of property within the purview of the presumptive abandonment provision of the act in question), but the legal questions involved were identical with ones confronting us here.

It is the contention of appellants that even though the Act be held valid it can apply only to deposits made after its effective date since its application to deposits made prior thereto would result in impairment of the contract between the depositor and the bank in violation of section 19 of the Constitution of Kentucky which prohibits the enactment of any law impairing the obligation of contracts. It is not argued that such application of the Act would result in violation of the contract clause of the Federal Constitution since this question was laid to rest by the Supreme Court in *Provident Institution for Savings v. Malone*, supra and *Security Sav. Bank v. Calif.*, 263 U. S. 282, 68 L. Ed. 306, wherein it was held that such statutes are not violative of the contract clause. These decisions are binding on us as to the federal question but not on the question of application of the Constitution of this state. *Glenn et al v. Field Packing Co.*, 290 U. S. 177.

In support of their contention appellant rely on *Bank of Louisville v. Board of Trustees of Public Schools*, 83 Ky. 219, 5 S. W. 735 and *Louisville School Board v. Bank of Kentucky*, 86 Ky. 150, 5 S. W. 739. In each of these cases the statutes in question attempted to vest in the school board title to bank deposits of persons who were absent from the state for eight years and who had not exercised any control over the deposits during that time. It was provided that the school board should be liable to the owner of the deposit, if he should later claim it. *but that no such liability should attach to the state.* In each case it was held that the deposit created a contract between the depositor and the bank by which the latter acquired the right to retain, use and control the money until it was returned to the depositor on his demand and that the statutes were void because they impaired the obligation of the contract from the standpoint of both the bank and the depositor.

A careful analysis of those opinions, reveals, however, that the underlying basis of the court's conclusion was the absence of perfect protection to the depositor and the bank. The opinion in the former case, on which the latter is based, is threaded through with comments on the failure of the statute to give the depositor, in lieu of his right of action against the bank, the substantial remedy of looking to the state for reimbursement and on its failure to give the bank any substantial remedy since it was left with no remedy except that of looking to the school board for reimbursement in the event it was compelled to account for the deposits. It is doubtful, to say the least, that the court would have reached the conclusion it did had the statute afforded to both a depositor and the bank the same perfect protection as that afforded by the Act here involved.

In any event, we think the correct conclusion was reached by the Supreme Court in the two cases referred to. It seems so clear as to require little discussion that there is no substantial impairment of the contract from the depositor's standpoint since his deposit is returnable to him by the state at any time he files a claim therefor. The argument as to impairment of the contract from the bank's standpoint was effectively answered by the Supreme Court in *Security Savings Bank v. Calif.*, *supra*, in these words: "The contract

of deposit does not give the banks a tontine right to retain the money in the event that it is not called for by the depositor. It gives the bank merely the right to use the depositor's money until called for by him or some other person duly authorized. If the deposit is turned over to the state, in obedience to a valid law, the obligation of the bank to the depositor is discharged."

It is our conclusion that the parts of the Act requiring a delivery of deposits ~~declared to be presumed abandoned~~ to the Department of Revenue are valid in their application to deposits made both prior and subsequent to the effective date of the Act.

There is little appeal in the insistence of appellants that if the strict letter of the decisions in *Bank of Louisville v. Board of Trustees of Public Schools and Louisville School Board v. Bank of Kentucky*, supra, is not followed our decision should be made prospective in accord with the policy adopted in *Payne v. City of Covington*, 276 Ky. 380, 123 S. W. (2d) 1045, of affording protection to those who have acted in reliance on opinions of this court and whose rights might be adversely affected by a change of decision, since, as indicated above, no substantial impairment of any right of either depositors or banks is effected by the Act.

The question of validity of the Act as applied to national banks must be approached in the light of the limitations applicable to state legislation affecting such institutions. National banks are amenable to state laws as are other institutions if such laws do not interfere with their functions in such manner as to conflict with the general objects and purposes of the National Banking Act. *First National Bank of Elizabethtown v. Com.*, 187 Ky. 151, 219 S. W. 175; *McClellan v. Chipman*, 164 U. S. 347, 41 L. Ed. 461; *First National Bank of San Jose v. Calif.*, 262 U. S. 366, 67 L. Ed. 1030. The burden placed on national banks of making the report of such deposits as the Act declares to be presumed abandoned is not an unwarranted interference. *Waite v. Dowley*, 94 U. S. 527, 24 L. Ed. 181. But, as said in *First National Bank of San Jose v. Calif.*, supra, "any attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of

the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created. Davis, *Elmira Sav. Bank*, 161 U. S. 275, 40 L. Ed. 700, 16 Sup. Ct. Rep. 502."

Appellants insist that the case just quoted from is conclusive as to the invalidity of the Act in its application to national banks. In that case was involved the validity of California statutes as so applied. The statutes declared that deposits in bank to the credit of depositors who for more than twenty years had not made a deposit or withdrawn any part of the deposit and where neither the depositor nor any claimant had filed any notice with the bank showing his present resident, should *escheat* to the state. The court, in commenting on the opinion of the Supreme Court of California affirming a judgment directing the payment of such deposits to the state, pointed out that the California court had declined to express an opinion as to whether the judgment operated as a present escheat of the rights of the depositor or whether the depositor still had the right to prosecute an action to obtain payment of the deposit from the state. Therefore, in discussing the case, the Supreme Court treated the California statutes as statutes of escheat or confiscation and held them void as being a regulation of national banks to such an extent as to tend to frustrate the purposes and objects of national legislation with respect to such banks. This was the reason the California statutes were held to be invalid as to national banks and not, as suggested by appellees, the fact that the statutes impaired the obligation of the contract of deposit. Analysis of the opinion reveals, however, that the only undue interference of the statutes with national banks was embodied in one sentence of the opinion as follows: "The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation." Thus it seems that the California statutes were held invalid as to national banks because they were deemed by the court to be *escheat* statutes confiscating the deposits solely by reason of *dormancy*. The comment of the court

on the failure of the California court to express an opinion on the right of the depositor to secure a return of the deposit is significant. Thus, while this case unquestionably decided that the California statutes were invalid as to national banks, and while this decision was reaffirmed as to the particular California statutes in the later case of *Security Sav. Bank v. California*, supra, we do not feel that it is controlling as to the act in controversy since the Act differs from the California statutes in that no escheat is declared by reason of mere dormancy—The Act is one pursuant to which more custody, as distinguished from title, is vested in the state by reason of dormancy and is not one of confiscation having the tendency to cause depositors to hesitate to make deposits in national banks. And, since the confiscatory feature, which the Supreme Court had in mind as being the feature of the California statutes which tended to bring about an undue interference with national banks, is absent from the present Act, it does not appear to us that the case is controlling of the question now presented.

It is true that the Supreme Court of Tennessee in *American National Bank of Nashville v. Clarke*, Supt. of Banks, 175 Tenn. 480, 135 S. W. (2d) 935 and the United States Circuit Court of Appeals for the Sixth Circuit in *Star, Atty. Gen. v. O'Conner, Comptroller, et al*, 118 F. (2d) 548, relying on the authority of the case under discussion, held somewhat similar statutes of Tennessee and Michigan invalid as to national banks but it seems to us that those cases fail to give full consideration to the fact that the Supreme Court pointed out that the undue interference of the California statutes with national banks was brought about by the confiscatory nature of the statutes in providing out and out escheat by reason of mere dormancy. It is significant, though, that the opinion in the Sixth Circuit case did touch lightly on this aspect of the *San Jose Bank* case as is revealed by the remark that "the Michigan statutes resemble the California Act in being closer akin to illegitimate laws of forfeiture than to legitimate laws of escheat."

Since the act in controversy does not provide for an escheat of deposits by reason of mere dormancy, as did the California statutes, (title being vested in the state only

after judicial determination of *actual* abandonment), and since the depositor may at any time before actual abandonment is adjudged (and give years thereafter if he was not served with actual notice) secure a return of his deposit from the state, it is our opinion that the Act has no tendency to cause depositors to hesitate on account of apprehended fear of confiscation to make deposits in national banks. This being true, there is no unwarranted interference with such banks and no frustration of the purposes of national legislation concerning them such as to render the Act invalid as to them.

The judgment is affirmed on the original appeal and reversed on the cross appeal with directions to enter a judgment in conformity with this opinion. An order having been entered in this court suspending the operation of the Act during the pendency of the appeal, the circuit court will, on return of the case to that court, fix a date for compliance with the Act, giving a reasonable time for that purpose.

Whole court sitting except Judge Rees.

*Attorneys for Appellants:*

CHARLES W. MILNER, Louisville, Kentucky.

LEO T. WOLFORD, Louisville, Kentucky.

*Attorneys for Appellee:*

HUBERT MEREDITH, *Atty. Gen.*, Frankfort, Kentucky.

A. E. FUNK, *Asst. Atty. Gen.*, Frankfort, Kentucky.

EARL WILSON, *Asst. Atty. Gen.*, Frankfort, Kentucky.

VINCENT GOODLET, Frankfort, Kentucky.